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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 870

RIN 3206–AM67

Federal Employees' Group Life Insurance Program: Court Orders Prior to July 22, 1998

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing this final regulation to adopt as final the interim final regulation published on December 4, 2012. The regulation implements section 8705 of title 5, United States Code regarding the effect of any court decree of divorce, annulment, or legal separation, or any court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation (hereinafter ''court order'') where the court order expressly provides that an individual receive Federal Employee's Group Life Insurance (FEGLI) benefits. The regulations will allow court orders submitted to the appropriate Federal agency before July 22, 1998 to be effective for providing FEGLI benefits if the court order was received in the appropriate office before the insured Federal employee's or annuitant's death. This revision does not affect the current statutory limitation that court orders apply only when FEGLI benefits are based on insured individuals who died on or after July 22, 1998.

DATES: This rule is effective April 27, 2016.

FOR FURTHER INFORMATION CONTACT: Marguerite Martel, Senior Policy Analyst, at (202) 606–0004 or email: *marguerite.martel@opm.gov*.

SUPPLEMENTARY INFORMATION: Public Law 105–205, 112 Stat. 683, enacted July 22, 1998, amending section 8705 of title 5, United States Code, required benefits to be paid in accordance with the terms of a court order instead of the otherwise existing statutory order of precedence for payment of benefits under FEGLI. On October 8, 1999, OPM published a final regulation interpreting the law to mean that only those court orders received in the appropriate office after the date the law was enacted would be valid to name a FEGLI beneficiary. The regulation amended section 870.801(d)(2), of title 5, Code of Federal Regulations.

Based on *Pascavage* v. *Office of Personnel Management,* 773 F. Supp.2d 452 (D. Del. 2011), OPM is changing this regulation to provide FEGLI benefits based on court orders submitted to the appropriate Federal agency before July 22, 1998, so long as the court order was received in the appropriate office before the insured Federal employee's or annuitant's death. This change is consistent with the settlement agreement in this case, *Pascavage* v. *Office of Personnel Management,* C.A. No.: 09–276–LPS–MPT (D. Del. filed Aug. 6, 2012).[1] This revision does not affect the current statutory limitation that court orders apply only when FEGLI benefits are based on insured individuals who died on or after July 22, 1998. On December 4, 2012, OPM published an interim final regulation at 77 FR 71687. We received no comments on the interim final regulation. Therefore, OPM is adopting the interim final regulation with no changes.

Regulatory Impact Analysis

OPM has examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of $100 million or more in any one year. This rule is not considered a major rule because OPM estimates there are relatively few court orders received by the appropriate office before July 22, 1998.

[1] The settlement agreement has been preliminarily approved by the Court.

Paperwork Reduction Act

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal employees, annuitants and their former spouses.

List of Subjects in 5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

■ Accordingly, the interim rule amending 5 CFR part 870 which was published at 77 FR 71687 on Dceemmber 4, 2012, is adopted as a final rule without change.

[FR Doc. 2016–09674 Filed 4–26–16; 8:45 am]

BILLING CODE 6325–63–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1167]

Airworthiness Directives Legal Interpretation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Airworthiness directives legal interpretation.

SUMMARY: The Federal Aviation Administration is issuing a legal interpretation on regulations applicable to airworthiness directives. This legal interpretation responds to questions asked by an Aviation Rulemaking Committee and is intended to resolve certain issues for the public.

DATES: April 27, 2016.

FOR FURTHER INFORMATION CONTACT: Douglas Anderson, Manager of Aircraft Certification and Space Law Branch, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–3073.

SUPPLEMENTARY INFORMATION:

The Request

This legal interpretation addresses several regulations in Title 14 of the Code of Federal Regulation (14 CFR) part 39 applicable to airworthiness directives. It responds to questions asked by the Federal Aviation Administration's (FAA) Organization/Procedures Working Group of the Airworthiness Directive Implementation Aviation Rulemaking Committee (AD ARC). The Working Group (WG) requested the agency to interpret several provisions in part 39 to resolve issues that have been debated within the WG. These issues partly result from amendments made to part 39 in 2002. *See Airworthiness Directives,* 67 FR 47998 (Jul. 22, 2002). The WG asked four questions:

1. What is the extent of an aircraft operator's continuing obligation following the issuance of an airworthiness directive (AD)?

2. What is 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?

3. What is the meaning of the term ''applicable'' in AD 2007–07–02?

4. What is the extent of an aircraft operator's responsibilities when an AD requires an action that cannot be accomplished on a particular aircraft?

The FAA published for public comment a proposed legal interpretation answering these questions. *Proposed Airworthiness Directive Legal Interpretation,* 76 FR 20898 (Apr. 14, 2011) (Proposed Legal Interpretation).[1] The FAA received numerous comments expressing concern with the FAA's proposed interpretation. Most comments focus on the FAA's responses to questions 1 and 4.

As an initial matter, it is important to emphasize that each AD is unique, and its terms control. Thus, this legal interpretation only addresses the matters raised by the AD ARC and is limited to an interpretation of part 39 and general agency policy governing ADs.

Legal Interpretation, Summary of Comments and the FAA's Responses

Some of the commenters suggested that this interpretation should change the existing part 39 regulations or FAA internal procedures with respect to how ADs are prepared and issued. The FAA rejects those suggestions because a regulation cannot be changed by a legal interpretation; rulemaking is the proper method for amending a regulation.

Some of the comments raised policy considerations, which provide valuable information to the FAA, but those policy considerations cannot change the present wording of the regulations, and are best taken into account during rulemaking. A legal interpretation only may explain the meaning of the words that are in the existing regulation; it may not create new policy. Set forth below is a summary and response to comments as to the proper interpretation of existing provisions of part 39.

Question 1: What is the extent of an aircraft operator's continuing obligation following the issuance of an airworthiness directive (AD)?

Answer: The FAA interprets §§ 39.7 and 39.9 to mean that operators have an ongoing obligation to ensure that the modification mandated by an AD is maintained.

For changes to AD-mandated modifications and for deviations from ADs that do not have a terminating action, the operator must obtain approval for an alternative means of compliance (AMOC) with the AD. The FAA recognizes that in some cases this may impose a burden on operators to obtain AMOC approvals for activities that would otherwise be considered normal maintenance. The FAA may allow, on an AD-by-AD basis, reversion to part 43 maintenance, with airworthiness limitations if appropriate to prevent operators from reintroducing unsafe conditions.

Summary of Comments Received

Some commenters contended that the words of the regulation must be given their plain meaning and that the proposed interpretation is not consistent with the regulatory text. Section 39.9 provides, ''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.'' Some commenters suggested that this means that once the requirements of the AD are met, the action has been taken to resolve the unsafe condition and the AD is, therefore, no longer applicable. Indeed, some commenters further contended that after the AD's requirements have been met, it is likely that the product will be in a new type design that is different from the type design covered under the AD, and therefore, the product now falls out of the AD's applicability. While some commenters contended that § 39.9 contains no continuing obligation to maintain an AD-mandated condition, other commenters suggested that the standard maintenance practices under other parts should then control. A significant number of the comments objected to maintaining an AD-mandated configuration in perpetuity without any allowance for or consideration of normal maintenance, alterations, and design changes properly performed and approved in accordance with parts 21 and 43.

FAA's Response to Comments

Under §§ 39.7 and 39.9, operators must comply with the requirements of applicable ADs and must operate aircraft in accordance with all applicable ADs. Section 39.7 prohibits the operation of a product that fails to meet AD requirements. Section 39.9 imposes a continuing obligation to maintain compliance with an AD by establishing a separate violation for each time an aircraft is operated or a product is used that fails to meet AD requirements. When these sections are read together in the context of part 39, an AD requires that products be operated free of any identified unsafe condition. The FAA issues ADs not only to require operators to accomplish particular actions listed in the AD, but also to ensure that, when products are operated, they are free of identified unsafe conditions. It is important that once the unsafe condition is corrected as required by an AD, the unsafe condition not be reintroduced. Even if the configuration of the airplane has changed to comply with the AD, it does not mean that the AD no longer applies.

There are two main categories of ADs issued by the FAA: (1) Ongoing inspection and/or maintenance requirements that address a known unsafe condition or an unsafe condition likely to exist; and (2) ADs that require modifications, which may be ''terminating actions'' for ongoing requirements, and which remove the unsafe condition. Sections 39.7 and 39.9 impose a continuing obligation to comply with both types of AD requirements.

The comments appear to manifest confusion regarding the second type of AD and specifically the use of the term ''terminating action'' in an AD. While

[1] In response to several requests, the FAA extended the comment period until June 30, 2011. 76 FR 30040 (May 24, 2011).

how that term is used in an individual AD controls, general guidance of the FAA's general use of such term follows. Terminating action ADs allow or direct operators to perform a maintenance action that removes the unsafe condition from the affected aircraft and eliminates the need for the AD's inspection requirements. One example of a terminating action is the removal and replacement of a defective part that had been subject to AD-mandated repetitive inspections. After a ''terminating action,'' the resulting configuration constitutes an FAA-approved type design which must be maintained as required by §§ 39.7 and 39.9. This configuration must also be maintained in order for the aircraft to be airworthy.[2]

Terminating actions fall into two broad categories—those that either (1) correct whatever defect kept the product from conforming to an approved type design; or (2) accomplish a required change in type design where the FAA has determined that the original type design does not comply with the applicable airworthiness standards. In both cases, the post-AD configuration meets type certification requirements and renders the aircraft in a condition for safe operation. An aircraft operator must maintain that resulting configuration, and may not change it to any other configuration that does not comply either with the AD or with an approved AMOC to the AD.

For ADs mandating modifications where the AD requires no further action after modification, the operator may perform standard maintenance practices on that new configuration, associated with maintaining the fleet, which would not change the required modification, and may do so without AMOC approval. Any change from the mandated modification, however, requires FAA approval of an AMOC.[3]

When an unsafe condition is eliminated in production before the FAA issues the AD, the FAA limits the applicability of the AD requirements to exclude those newly produced aircraft. Those new aircraft resolve the unsafe condition by having appropriate modifications incorporated into their type design during production and initial airworthiness certification. Continued compliance with the type design, inspection, and maintenance requirements under parts 21 and 43 for that product should ensure that operators maintain the product's condition for safe operation. In contrast, when the FAA issues an AD, it is because the agency determined that regulatory requirements have not effectively prevented an unsafe condition of the affected products. Therefore, § 39.7 requires that, when a product is operated, it must meet the requirements of all applicable ADs including any ongoing mandated inspection and maintenance requirements that may override general part 43 maintenance practices.

Question 2: What is 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?

Answer: An AD may require more actions than correcting the specific unsafe condition. These may include actions reasonably related to resolving or preventing the unsafe condition. Thus, an aircraft operator has an obligation to accomplish all actions required by an AD including those beyond the actions necessary to resolve the unsafe condition specifically identified in an AD.

Summary of Comments Received

Some commenters argued that the FAA's interpretation is not consistent with the regulatory text because by its terms § 39.11 is limited to actions to resolve only the ''unsafe condition.'' According to such commenters, if an action required by the AD does not directly affect the unsafe condition, those actions are over-prescriptive and outside the scope of the FAA's authority.

Other commenters take the opposite view. As Airbus, a design approval holder (DAH) noted, operators often request complete sets of instructions for preparation, procedures, test, and closing up. Additionally, DAH-determined tools, methods, proceedings, materials, and instructions to be used for accomplishing a service instruction for continued airworthiness are part of the type design under § 21.31.

FAA's Response to Comments

The FAA's interpretation is consistent with Title 49 of United States Code, Section 44701, which establishes the FAA's broad authority to issue regulations in the interest of aviation safety and the FAA issues ADs under such authority. In addition, § 39.11 of the regulations provides:

§ 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 (emphasis added).

When describing the types of actions required by an AD, which is a final rule, § 39.11 does not limit the agency's broad statutory authority. AD requirements are imposed by the language of the AD itself and not by § 39.11. Thus, an AD may require more actions than simply correcting the specific unsafe condition by, for example, requiring certain continuing maintenance actions to prevent or detect the unsafe condition in the future.

In developing an AD, the FAA determines the range of actions that are reasonably related to and further the interest of aviation safety.[4] 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, the FAA has the authority to mandate such instructions by AD.

The rulemaking process by which individual ADs are adopted provides the public with an opportunity to identify and express concern with potentially overly prescriptive requirements. In addition, each AD contains a provision allowing for approval of an AMOC, which allows an operator to address an unsafe condition in a manner approved by the FAA.

Question 3: What is the meaning of the term ''applicable'' in AD 2007–07–02?[5]

Answer: The FAA interprets ''applicable'' to limit the required actions to those that apply to a particular aircraft under the specific conditions found. The use of ''applicable'' does not permit an operator to decide which actions are necessary to correct the unsafe condition.

Summary of Comments Received

One commenter contended there was no ambiguity in the subject AD because

[2] Any operation of an unairworthy aircraft is subject to enforcement action under Part 91.

[3] Parts 21 and 43 also prohibit the reintroduction of an unsafe condition.

[4] The FAA has ''broad authority to require whatever types of corrective actions we determine to be most effective in addressing identified unsafe conditions. This includes inspections, repairs, modifications, operating limitations, airworthiness limitations, and maintenance program requirements.'' *Airworthiness Directives,* 67 FR 47998–01 (Jul. 22, 2002). The FAA issues ADs under the Administrative Procedure Act (APA); therefore, if the actions required by an AD are reasonably related to resolution of the unsafe condition, the FAA may mandate them. 5 U.S.C.A. § 551 *et seq.*

[5] *AD 2007–07–02* paragraph (f) states in pertinent part that operators must ''do[] all the applicable actions specified in the Accomplishment Instructions of the applicable service bulletin specified in Table 1 of this AD.''.

the SB specifically list the fleets affected, and which steps are applicable based on several different configurations of various aircraft. Therefore, the commenter concluded there is no need to include the word ''applicable'' to exclude those products for which the requirements clearly do not apply.

ARSA commented that under part 39 the FAA cannot make anything ''applicable'' that is not directly related to the unsafe condition and specified actions must be limited to those that directly address the unsafe condition. In its view, the FAA's interpretation mandates accomplishing all actions, whether or not necessary to correcting the unsafe condition, which is contrary to part 39.

FAA's Response to Comments

The FAA intends ''applicable'' to have the same meaning in both places in paragraph (f) of *AD 2007–07–02.* The first usage limits the required actions to those that apply to a particular aircraft under the specific conditions found; it does not permit an operator to decide which actions are necessary and which are unnecessary to correct the unsafe condition.

The second usage references Table 1 in the AD that identifies the model of aircraft to which each service bulletin applies. The ''applicable service bulletin'' means the service bulletin that applies to each corresponding aircraft model, as indicated in Table 1 of the AD. Similarly, ''all the applicable actions'' specified in each applicable service bulletin are those actions that are identified as applying to a particular aircraft. ''Applicable'' is a necessary qualifier in this context for two reasons: (1) In many ADs, the referenced service bulletins specify different actions for different aircraft configurations, typically identified as ''Group 1,'' ''Group 2,'' etc.; (2) in many ADs, the referenced service bulletins specify different actions depending on conditions found during performance of previous steps in the instructions (*e.g.,* 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). The term ''applicable'' limits the AD's requirements to only those that are specified in the service bulletin for the configuration and conditions of a particular aircraft. In this case, the word ''all'' means that every applicable action must be accomplished.

Although this response applies specifically to AD 2007–07–02, this general principle also applies to uses of the term ''applicable'' in other ADs. The FAA promulgates ADs with specific standards to directly address the identified unsafe condition. As exemplified by AD 2007–07–02, ADs often require many different actions for various models and aircraft configurations. Because of those complexities, mandating AD actions without incorporating by reference the manufacturer's service bulletin that may contain ''normal'' part 43 maintenance actions becomes impracticable or may interject unnecessary complexities or inconsistencies that adversely affect performance of the necessary corrective actions.

Question 4: What is the extent of an aircraft operator's responsibilities when an AD requires an action that cannot be accomplished on a particular aircraft?

Answer: Sections 39.15 and 39.17 require ADs to apply to a specific product, even if the product has been changed through component removal or replacement or other modification. An operator who cannot comply with the specific requirements of an AD must request approval of an AMOC from the FAA. The operator must obtain an AMOC approval even if the affected component has been removed from the aircraft, rendering compliance with the specific requirements of the AD impossible. The AMOC process allows the FAA to determine whether the unsafe condition has been eliminated when an operator removes a component addressed in an AD and replaces it with a different component.

Summary of Comments

Some commenters stated the FAA's interpretation is either wrong because when the AD pertains to a specific part or component that has since been legally removed or pertains to a part or such that is not installed on the aircraft, the AD no longer applies, or represents a change from past practice or guidance.

FAA Response to Comments

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 from the FAA. Sections 39.15 and 39.17 directly answer this issue. Section 39.15 provides that an AD applies to each product identified in the AD, even if an individual product has been changed by modifying, altering, or repairing it in the area addressed by the AD. Section 39.17 requires that if a change in a product affects an operator's ability to accomplish the actions required by the AD in any way, the operator must request FAA approval of an AMOC. Together these sections require an operator who cannot comply with the specific requirements of an AD to request FAA approval of an AMOC. The operator must obtain an AMOC approval even if the affected product has been removed from the aircraft, rendering compliance with the specific requirements of the AD impossible. The AMOC process allows the FAA to determine whether the unsafe condition has been eliminated when an operator removes a component to which an AD applies and replaces it with a different component.

This approach was clearly specified in the FAA's part 39 rulemaking in 2002. *See Airworthiness Directives,* 67 FR 47998 (''Specifically, FAA is adding to part 39 the language explaining that ADs apply even if products have been modified, altered, or repaired in the area addressed by the directive.''). The 2002 rulemaking did not introduce any new regulatory requirements; rather, the FAA simply codified in part 39 provisions currently found in ADs. *Id.* at 47999. If a change in a product affects one's ability to comply with the AD, the person operating the aircraft or using the product must ask the FAA's permission to use an AMOC, and the request must either show that the change eliminated the unsafe condition or include the specific actions proposed. *Id.* at 48000.

This response was coordinated with the Aircraft Maintenance Division of the Flight Standards Service and the Design, Manufacturing and Airworthiness Division of the Aircraft Certification Service.

Issued in Washington, DC, on April 19, 2016.

Lorelei Peter,

Assistant Chief Counsel for Regulations.

[FR Doc. 2016–09667 Filed 4–26–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–4474; Directorate Identifier 2015–NE–34–AD; Amendment 39–18485; AD 2016–08–09]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain