

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2008-0736; Directorate Identifier 2008-NM-102-AD]

RIN 2120-AA64

#### Airworthiness Directives; McDonnell Douglas Model DC-9-14, DC-9-15, and DC-9-15F Airplanes, and DC-9-20, DC-9-30, DC-9-40, and DC-9-50 Series Airplanes

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

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

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain McDonnell Douglas airplanes listed above. This proposed AD would require installing a dam assembly for the container of the fuel boost pump of the center tank located in the right main tank, and doing the related investigative actions, and corrective actions if necessary. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent the center tank fuel boost pump from operating in a fuel vapor zone and becoming a potential ignition source in the right main tank, potentially resulting in a fuel tank explosion and consequent loss of the airplane.

**DATES:** We must receive comments on this proposed AD by September 15, 2008.

**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:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024).

#### 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 (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** William S. Bond, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5253; fax (562) 627-5210.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2008-0736; Directorate Identifier 2008-NM-102-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

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21-78, and subsequent Amendments 21-82 and 21-83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The manufacturer has found that a potential ignition source may occur in the boost pump container of the center fuel tank located in the right main tank. When the center fuel tank level is low, fuel from the boost pump container of the center fuel tank is drained allowing pumps to operate in a fuel vapor zone. Installing a dam in the boost pump container of the center fuel tank raises the retained fuel level in the container, keeping the boost pumps and connectors submerged in fuel. When the center fuel tank level is low, this condition, if not corrected, could cause a potential ignition source if a pump motor case or connector burn through occurred, resulting in a fuel tank explosion and consequent loss of the airplane.

#### Relevant Service Information

We have reviewed Boeing Service Bulletin DC9–28–216, dated March 18, 2008. The service bulletin describes procedures for installing a dam assembly for the container of the fuel boost pump of the center tank located in the right main tank and doing the related investigative and applicable corrective actions. The related investigative action is doing a leak check on the installation, and the applicable corrective action is reapplying sealant to repair any leak detected.

#### FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. This proposed AD would require accomplishing the actions specified in the service information described previously.

#### Costs of Compliance

We estimate that this proposed AD would affect 413 airplanes of U.S. registry. We also estimate that it would take about 3 or 7 work-hours per product, depending on airplane configuration, to comply with this proposed AD. The average labor rate is \$80 per work-hour. Required parts would cost \$1,142 or \$1,697 per product, depending on configuration of the airplane. Based on these figures, we estimate the cost of this proposed AD to

the U.S. operators to be \$570,766 or \$932,141, or \$1,382 or \$2,257 per product, depending on configuration of the 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

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would 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 this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866,
2. Is not a "significant rule" under the 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.

#### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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:

**McDonnell Douglas:** Docket No. FAA–2008–0736; Directorate Identifier 2008–NM–102–AD.

#### Comments Due Date

(a) We must receive comments by September 15, 2008.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to McDonnell Douglas Model 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; as identified in Boeing Service Bulletin DC9–28–216, dated March 18, 2008.

#### Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the center tank fuel boost pump from operating in a fuel vapor zone and becoming a potential ignition source in the right main tank, potentially resulting in a fuel tank explosion and consequent loss of the airplane.

#### Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

#### Install Dam Assembly

(f) Within 60 months after the effective date of this AD, install a dam assembly for the container of the fuel boost pump of the center tank located in the right main tank, and do the related investigative and applicable corrective actions, by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Service Bulletin DC9–28–216, dated March 18, 2008. Do the applicable corrective actions before further flight.

#### Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, FAA, Los Angeles Aircraft Certification Office, ATTN: William S. Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5253; 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.

Issued in Renton, Washington, on July 23, 2008.

**Ali Bahrami,**

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

[FR Doc. E8-17620 Filed 7-31-08; 8:45 am]

**BILLING CODE 4910-13-P**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 40, 41, and 145

**RIN 3038-AC44**

#### Confidential Information and Commission Records and Information

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed rulemaking, reproposal.

**SUMMARY:** On July 20, 2007, the Commission published in the **Federal Register** a notice of proposed rulemaking to amend the procedures under which designated contract markets (DCMs), derivatives clearing organizations (DCOs), and derivatives transaction execution facilities (DTEFs) (collectively, “registered entities”) may request confidential treatment for products and rules submitted via certification procedures or for Commission review and approval under parts 40 and 41 of the Commission’s regulations.<sup>1</sup> Under the proposed amendments to Commission regulation 40.8, registered entities filing product and rule submissions would follow a procedure separate from the customary Freedom of Information Act (FOIA) confidential treatment procedures specified in Commission regulation 145.9, 17 CFR 145.9. As proposed to be amended, regulation 40.8(c) provided that: registered entities submitting material under parts 40 and 41 would be required to file a detailed written justification simultaneously with the request for confidential treatment; registered entities submitting material under parts 40 and 41 would be required to segregate material for which confidential treatment is requested in an appendix to the submission; and Commission staff may make an initial determination to grant or deny confidential treatment to such material before receiving a request under the FOIA. Regulation 40.8(c) is being repropose to clarify that an initial

determination by staff to deny confidential treatment may be appealed to the Commission’s Office of General Counsel and that such an appeal will stay release of the material. The Commission believes these amendments, by creating a separate confidential treatment review process for filings under parts 40 and 41, will enhance the Commission’s ability to provide the public with immediate access to non-confidential information.

The Commission received comments from three registered entities in response to the proposed rulemaking.<sup>2</sup> Two commenters expressed concerns with the amendments themselves and questioned the adequacy of the Commission’s explanation for proposing the changes. In response to those comments, the Commission has determined to re-propose the amendments to regulation 40.8 to: clarify the procedure for seeking review of an adverse determination; amend appendix D to part 40 by adding to the submission cover sheet a box to be checked if confidential treatment is requested for any part of the underlying submission, in order to assist staff in efficiently and accurately posting publicly available information on the Commission’s Web site; and amend Commission regulation 145.9(b) to clarify that its procedures for requesting confidential treatment do not apply to submissions filed under parts 40 and 41. The Commission further intends in this reproposal to more fully address its reasons for the proposed amendments and to explain the distinction between the proposed procedure and the procedures specified in regulation 145.9.

**DATES:** Submit comments on or before September 2, 2008. Comments previously submitted need not be resubmitted.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.
- *Mail/Hand Deliver:* David Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *E-mail:* [secretary@cftc.gov](mailto:secretary@cftc.gov).

#### FOR FURTHER INFORMATION CONTACT:

Susan Nathan, Senior Special Counsel, (202) 418-5133, Division of Market Oversight, Commodity Futures Trading

Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. *Electronic mail:* [snathan@cftc.gov](mailto:snathan@cftc.gov). This document is also available at <http://www.regulations.gov>.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### A. Overview

Part 40 of the Commission’s regulations sets forth the standards and procedures to be followed by registered entities<sup>3</sup> for listing products for trading by certification to the Commission; voluntary submission of new products for Commission review and approval; amendments to terms or conditions of enumerated agricultural contracts; voluntary submission of rules for Commission review and approval; and self-certification of rules by DCMs and DCOs. Part 41 of the regulations provides standards and procedures for filing required information with respect to security futures products. Although much of the information required by parts 40 and 41 is made public by statute, regulation or agency practice, the Commission has observed an increase over the past several years in the number of confidential treatment requests for filings submitted under these parts. Most, but not all of these requests for confidential treatment have been submitted to the Commission in connection with market maker and other incentive programs (collectively, incentive programs).<sup>4</sup>

###### B. Freedom of Information Act

Most requests for confidential treatment are made pursuant to the Freedom of Information Act, 5 U.S.C. 552 (FOIA), which provides generally that the public has a right of access to federal agency records except to the extent such records, or portions of them, are protected from disclosure by one or

<sup>3</sup> A registered entity is defined in section 1a(29) of the Commodity Exchange Act (Act) as a DCM under section 5 of the Act (including section 5f), a DTEF registered under section 5a of the Act, and a DCO registered under section 5b of the Act. Section 5f of the Act, along with part 41 of the Commission’s regulations, establishes requirements for national securities exchanges, national securities associations and alternative trading systems registered with the Securities and Exchange Commission to notice register with the Commission in order to list security futures products (*i.e.*, futures on a single equity security and futures on narrow-based security indexes).

<sup>4</sup> Incentive programs typically are created by a registered entity to increase volume of trading and liquidity for new product launches or in markets that for other reasons have low trading volume. In general, registered entities have requested confidential treatment for the name of the market maker(s), the compensation arrangements provided by the registered entity, trade priorities (*i.e.*, percentage of the order flow), and the bid/ask spread level.

<sup>2</sup> Letter dated August 20, 2007 from CME Group (CME); Letter dated August 20, 2007 from CBOE Futures Exchange (CFE); Letter dated August 23, 2007 from New York Mercantile Exchange, Inc. (NYMEX).

<sup>1</sup> 72 FR 39764 (July 20, 2007).