

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2010-1163; Directorate Identifier 2009-NM-233-AD]

RIN 2120-AA64

Airworthiness Directives; 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328-100 and -300 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 that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During a routine inspection, cracks have been found on an aeroplane at the lower wing panel rear trailing edge inboard of flap lever arm 1 (rib 5). A subsequent inspection of the other aeroplanes in that operator's fleet revealed several more aeroplanes with cracks at the same location. This condition, if not corrected, could lead to structural failure of the affected wing panel, possibly resulting in the wing separating from the airplane with consequent loss of control.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by January 18, 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:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact 328 Support

Services GmbH, Global Support Center, P.O. Box 1252, D-82231 Wessling, Federal Republic of Germany; telephone +49 8153 88111 6666; fax +49 8153 88111 6565; e-mail gsc.op@328support.de; Internet <http://www.328support.de>. 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 Operations office 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 Operations 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1137; fax (425) 227-1149.

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-2010-1163; Directorate Identifier 2009-NM-233-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 based on 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

On June 3, 2008, we issued AD 2008-10-51, Amendment 39-15535 (73 FR 30752, May 29, 2008). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2008-10-51, additional inspections and a

modification have been developed to address the onset of cracks in the affected wing panel. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued Airworthiness Directive 2009-0194, dated September 1, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

During a routine inspection, cracks have been found on an aeroplane at the lower wing panel rear trailing edge inboard of flap lever arm 1 (rib 5). A subsequent inspection of the other aeroplanes in that operator's fleet revealed several more aeroplanes with cracks at the same location. This condition, if not corrected, could lead to structural failure of the affected wing panel, possibly resulting in the wing separating from the airplane with consequent loss of control.

To correct this unsafe condition, EASA issued Emergency AD 2008-0087-E [dated May 8, 2008] to require detailed visual inspections (DVI) of both the left (LH) and right (RH) wing panel rear trailing edge around rib 3 and rib 5 and a subsequent Eddy Current inspection (NDI) [non-destructive inspection] of the same area to detect cracks, follow-up repair actions when cracks are found, and the reporting of all findings. The TC [type certificate] holder has now developed a modification, consisting of the cold expansion of the former lower wing panel CAMLOC holes together with the installation of new attachment material that will prevent the onset of cracks in the affected wing panel.

For the reasons described above, this [EASA] AD retains the inspection and repair requirements of AD 2008-0087-E, which is superseded, adds repetitive inspections and a requirement to modify both the LH and RH wing panel rear trailing edges from rib 3 to rib 9. Modification does not constitute terminating action for the new repetitive inspection requirements of this AD.

The new inspections are repetitive eddy current inspections. The modification includes cold expansion of the former lower wing panel CAMLOC holes and installation of new attachment material. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

328 Support Services GmbH has issued Alert Service Bulletins ASB-328-57-037 and ASB-328J-57-015, both Revision 2, both dated May 20, 2008. 328 Support Services GmbH has also issued Service Bulletins SB-328-57-481 and SB-328J-57-230, both Revision 1, both dated October 15, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 49 products of U.S. registry.

The actions that are required by AD 2008–10–51 and retained in this proposed AD take about 2 work-hours per product, at an average labor rate of \$85 per work hour. Required parts cost about \$0 per product. Based on these figures, the estimated cost of the currently required actions is \$170 per product.

We estimate that it would take about 8 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is \$85 per work-hour. Required parts would cost about \$11,600 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$601,720, or \$12,280 per product.

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.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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 removing Amendment 39–15535 (73 FR 30752, May 29, 2008) and adding the following new AD:

328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH): Docket No. FAA–2010–1163; Directorate Identifier 2009–NM–233–AD.

Comments Due Date

(a) We must receive comments by January 18, 2011.

Affected ADs

(b) This AD supersedes AD 2008–10–51, Amendment 39–15535.

Applicability

(c) This AD applies to 328 Support Services GmbH (Type Certificate previously held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and –300 airplanes; all serial numbers; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During a routine inspection, cracks have been found on an aeroplane at the lower wing panel rear trailing edge inboard of flap lever arm 1 (rib 5). A subsequent inspection of the other aeroplanes in that operator's fleet revealed several more aeroplanes with cracks at the same location. This condition, if not corrected, could lead to structural failure of the affected wing panel, possibly resulting in the wing separating from the airplane with consequent loss of control.

* * * * *

The new inspections are repetitive eddy current inspections. The modification includes cold expansion of the former lower wing panel CAMLOC holes and installation of new attachment material.

Compliance

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

Restatement of Requirements of AD 2008–10–51 With Updated Service Information

Repetitive Detailed Visual Inspections for Cracks

(g) Within 10 flight cycles, or 10 flight hours, or 7 days, whichever occurs first, after June 3, 2008 (the effective date of AD 2008–10–51): Accomplish a detailed visual inspection of both the left-hand (LH) and right-hand (RH) lower wing panel inboard and outboard of flap lever arm 1 (rib 5) for cracks, in accordance with the Accomplishment Instructions of Dornier Alert Service Bulletin ASB–328J–57–015 or

ASB-328-57-037, both Revision 1, both dated May 8, 2008, as applicable; or 328 Support Services Alert Service Bulletin ASB-328J-57-015 or ASB-328-57-037, both Revision 2, both dated May 20, 2008; as applicable. After the effective date of this AD, use only 328 Support Services Alert Service Bulletin ASB-328J-57-015 or ASB-328-57-037, both Revision 2, both dated May 20, 2008. If no crack is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 50 flight hours. If any crack is detected, before further flight, do an eddy current inspection in accordance with paragraph (h) of this AD.

Repetitive Eddy Current Inspections for Cracks

(h) Within 400 flight hours or 3 months after June 3, 2008, whichever occurs first: Accomplish an eddy current inspection of both the LH and RH lower wing panel in the vicinity of rib 3 and inboard and outboard of flap lever arm 1 (rib 5) for cracks, in accordance with the Accomplishment Instructions of Dornier Alert Service Bulletin ASB-328J-57-015 or ASB-328-57-037, both Revision 1, both dated May 8, 2008; or 328 Support Services Alert Service Bulletin ASB-328J-57-015 or ASB-328-57-037, both Revision 2, both dated May 20, 2008; as applicable. After the effective date of this AD, use only 328 Support Services Alert Service Bulletin ASB-328J-57-015 or ASB-328-57-037, both Revision 2, both dated May 20, 2008. Repeat the eddy current inspection thereafter at intervals not to exceed 400 flight cycles until the inspection required by paragraph (i) of this AD is accomplished. Accomplishment of the eddy current inspection terminates the detailed visual inspection required by paragraph (g) of this AD.

New Requirements of This AD

New Repetitive Intervals for Eddy Current Inspections

(i) Within 800 flight cycles after the last eddy current inspection required in paragraph (h) of this AD is done, or within 60 days after the effective date of this AD, whichever occurs later, do an eddy current inspection for cracking of the lower wing panel (outside) around the flap lever arm 1 (rib 5); in accordance with the Accomplishment Instructions of 328 Support Services Alert Service Bulletin ASB-328-57-037 (for Model 328-100 airplanes) or ASB-328J-57-015 (for Model 328-300 airplanes), both Revision 2, both dated May 20, 2008. Repeat the inspection thereafter at intervals not to exceed 800 flight cycles. Doing this inspection terminates the repetitive inspection requirements of paragraph (h) of this AD.

Inspection and Modification of Lower Wing Panel

(j) Within 24 months after the effective date of this AD, do an eddy current inspection of the lower wing panel (outside) around the flap lever arm 1 (rib 5). If no cracking is

found, modify the lower wing panel by doing a cold expansion of the CAMLOC holes and installing new attachment material from rib 9 LH to rib 9 RH. Do all actions required by this paragraph in accordance with the Accomplishment Instructions of 328 Support Services Service Bulletin SB-328-57-481 (for Model 328-100 airplanes) or SB-328J-57-230 (for Model 328-300 airplanes), both Revision 1, both dated October 15, 2009. Doing the modification does not end the repetitive inspection requirements of paragraph (i) of this AD.

Repair

(k) If any cracking is found during any inspection required by this AD, before further flight contact 328 Support Services GmbH for repair instructions and do the repair using a method approved by either the Manager, International Branch, ANM 116, Transport Airplane Directorate, FAA; or European Aviation Safety Agency (EASA) (or its delegated agent).

Inspections Accomplished According to Previous Issues of Service Bulletins

(l) Inspections accomplished before the effective date of this AD according to Dornier Alert Service Bulletin ASB-328-57-037 or Dornier Alert Service Bulletin ASB 328J-57-015, both Revision 1, both dated May 8, 2008, as applicable, are considered acceptable for compliance with the inspection requirements of paragraphs (i) and (j) of this AD.

Report

(m) At the applicable time specified in paragraph (m)(1) and (m)(2) of this AD: Send 328 Support Services GmbH a report of findings (both positive and negative) found during each inspection required by paragraphs (g), (h), and (i) of this AD. The report must include the inspection results, a description of any cracks found, the airplane serial number, and the number of landings and flight hours on the airplane. Send the report to 328 Support Services GmbH, Global Support Center, P.O. Box 1252, D-82231 Wessling, Federal Republic of Germany; Telephone +49 8153 88111 6666; fax 49 8153 88111 6565; e-mail: gsc.op@328support.de.

(1) *For any inspection done after the effective date of this AD:* Within 30 days after the inspection.

(2) *For any inspection done before the effective date of this AD:* Within 30 days after the effective date of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

EASA AD 2009-0194 gives credit for eddy current inspections conducted in accordance with the maintenance review board tasks. We are not giving credit for those inspections.

Other FAA AD Provisions

(n) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International

Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1137; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120-0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES-200.

(4) *Special Flight Permits:* Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of paragraphs (g), (h), and (i) of this AD can be done if the following conditions are met:

(i) The initial inspection required by paragraph (g) of this AD must be accomplished.

(ii) If a crack indication exceeds 12.5 mm (0.49 inch), the Manager, International Branch, ANM-116, concurs with issuance of the special flight permits.

Related Information

(o) Refer to MCAI EASA Airworthiness Directive 2009-0194, dated September 1, 2009, and the service bulletins listed in Table 1 of this AD, for related information.

TABLE 1—SERVICE BULLETINS

Service Bulletin	Revision	Date
328 Support Services Alert Service Bulletin ASB-328-57-037	2	May 20, 2008.
328 Support Services Alert Service Bulletin ASB-328J-57-015	2	May 20, 2008.
328 Support Services Service Bulletin SB-328-57-481	1	October 15, 2009.
328 Support Services GmbH Service Bulletin SB-328J-57-230	1	October 15, 2009.

Issued in Renton, Washington on November 22, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010-30282 Filed 12-1-10; 8:45 am]

BILLING CODE 4910-13-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 190

RIN 3038-AD99

Protection of Cleared Swaps Customers Before and After Commodity Broker Bankruptcies

AGENCY: Commodity Futures Trading Commission.

ACTION: Advanced notice of proposed rulemaking; request for comments.

SUMMARY: The Commodity Futures Trading Commission (the “CFTC” or “Commission”) seeks comment on possible models for implementing new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) concerning the protection of collateral posted by customers clearing swaps.

DATES: Submit comments on or before January 18, 2011.

ADDRESSES: You may submit comments, identified by RIN number 3038-AD99, by any of the following methods:

- *Agency Web site, via its Comments Online process:* <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Web site.

- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

- *Hand Delivery/Courier:* same as mail above.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Please submit your comments by only one method.

All comments must be submitted in English, or if not, accompanied by an

English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in CFTC Regulation 145.9, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from www.cftc.gov that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

Robert B. Wasserman, Associate Director, Division of Clearing and Intermediary Oversight (DCIO), at 202-418-5092 or rwasserman@cftc.gov; Martin White, Assistant General Counsel, at 202-418-5129 or mwhite@cftc.gov; or Nancy Liao Schnabel, Special Counsel, DCIO, at 202-418-5344 or nschnabel@cftc.gov. In each case, also at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

This Advanced Notice of Proposed Rulemaking (“ANPR”) is intended to obtain comment from interested parties concerning the appropriate model for protecting the margin collateral posted by customers clearing swaps transactions. As discussed in more detail below, the statutory language in Dodd-Frank concerning the protection of swaps customer margin is substantially similar, though not identical, to analogous provisions in Section 4d(a) of the Commodity

Exchange Act (“CEA”) ¹ applicable to the protection of collateral posted by customers with respect to exchange-traded futures. The Commission therefore is seeking comment on whether to adopt a similar model to protect the margin collateral posted by customers clearing swaps transactions as it currently employs with respect to exchange-traded futures, or whether another model is appropriate.

Section 4d(f)(2) of the CEA, ² as added by Section 724 of Dodd-Frank, provides that “property of a swaps customer [received to margin a swap] * * * shall not be commingled with the funds of the futures commission merchant or be used to margin, secure or guarantee any trades or contracts of any swaps customer or person other than the person for whom the same are held.” ³ Section 4d(f)(6) of the CEA makes it unlawful for a depository, including a derivatives clearing organization (“DCO”), that has received such swaps customer property “to hold, dispose of, or use any such * * * property as belonging to * * * any person other than the swaps customer of the futures commission merchant.” ⁴

The provisions applicable to the margin posted by exchange-traded futures customers are similar, but not identical. Section 4d(a)(2) provides that “property received [by a futures commission merchant] to margin, guarantee or secure the [exchange-traded] contracts of any customer of such [futures commission merchant] * * * shall not be commingled with the funds of such commission merchant or be used to guarantee the trades or contracts * * * of any person other than the one for whom the same are held.” ⁵ Section 4d(b) makes it unlawful for a DCO that has received such customer property “to hold, dispose of, or use any such * * * property as belonging to * * * any person other

¹ 7 U.S.C. 6d(a).

² 7 U.S.C. 6d(f)(2).

³ Section 4d(f)(3)(A) of the CEA provides an exception permitting commingling “for convenience.”

⁴ 7 U.S.C. 6d(f)(6) (emphasis added). This section was added by Section 724(a) of Dodd-Frank, Public Law 111-203, 124 Stat. 1376.

⁵ Section 4d(a)(2) provides a similar exception permitting commingling “for convenience.”