

Proposed Rules

Federal Register

Vol. 67, No. 37

Monday, February 25, 2002

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.

GENERAL ACCOUNTING OFFICE

4 CFR Part 21

General Accounting Office, Administrative Practice and Procedure, Bid Protest Regulations, Government Contracts

AGENCY: General Accounting Office.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The General Accounting Office (GAO) is reviewing, and will be revising, its Bid Protest Regulations, promulgated in accordance with the Competition in Contracting Act of 1984. GAO last revised Part 21 in 1996, and believes that developments since that time warrant updating the Regulations to reflect current practice. In connection with this effort, GAO also is soliciting comments on how its Regulations should be revised to improve the overall efficiency and effectiveness of the bid protest process at GAO.

DATES: Comments must be submitted on or before April 1, 2002.

ADDRESSES: Comments should be addressed to: John M. Melody, Assistant General Counsel, General Accounting Office, 441 G Street, NW., Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: John M. Melody (Assistant General Counsel) or David A. Ashen (Deputy Assistant General Counsel), 202-512-9732.

SUPPLEMENTARY INFORMATION: GAO is considering revising its Bid Protest Regulations, in accordance with the Competition in Contracting Act of 1984, 31 U.S.C. 3555(a). Revisions are being considered in several areas to take into account legal developments and changes in practice that have occurred since the 1996 revision. Among the changes being considered are the following:

Section 21.0(g) currently states that a document may be filed by hand delivery, mail, or commercial carrier, and then goes on to state that parties wishing to file by facsimile transmission

or other electronic means must ensure that the necessary equipment at GAO's Procurement Law Group is operational. GAO is not aware that there has been any significant confusion regarding acceptable means of filing protests and other documents. However, in light of our experience that documents commonly are filed by facsimile transmission, and our recent initiative to permit electronic filing, we believe this paragraph should clarify that filing by facsimile transmission is permitted (and, in fact, is commonplace), and that electronic filing (E-mail) of protest documents is permitted under certain circumstances.

Alternate dispute resolution (ADR) is utilized regularly by GAO as a means of resolving bid protests in an efficient, expeditious manner, but there is no language in the Bid Protest Regulations identifying it as such. Since a substantial number of cases have been found to be suitable for resolution using ADR, and it is anticipated that this will remain the case, GAO is considering adding language to reflect this practice.

Under the timeliness provisions of § 21.2(a)(2), where a debriefing is requested and required, any protest basis that is known or should have been known, either before or as a result of the debriefing, shall not be filed prior to the debriefing date offered to the protester. This rule has had the unintended result, in a very few cases, of leading protesters to delay—until after a debriefing—protesting a matter that arose during the procurement (for example, an alleged Procurement Integrity Act violation), prior to award. As it has long been GAO's view that it is beneficial to the procurement system to have alleged procurement deficiencies resolved, where possible, at the time the alleged deficiency arises, GAO is considering revising § 21.2(a)(2) to provide guidance in this area.

Section 21.5(c) provides that GAO will consider affirmative determinations of responsibility only under very limited circumstances, reflecting GAO's long held view that such determinations are so subjective that they do not lend themselves to reasoned review. In January 2001, the Court of Appeals for the Federal Circuit, in its decision *Impresa Construzioni Geom. Domenico Garufi v. United States*, 238 F.3d 1324 (Fed. Cir. 2001) held that affirmative determinations of responsibility by

contracting officers are reviewable by the Court of Federal Claims under the "arbitrary and capricious" standard applicable under the Administrative Procedures Act. In light of the Federal Circuit's decision, GAO is considering whether to revise its Regulations in this area.

GAO welcomes comments on these considerations, as well as suggestions for changes to other areas of the Regulations that may enhance the efficiency and overall effectiveness of the bid protest process.

Comments may be submitted by hand delivery or mail to the address in the address line, by e-mail at *BidProtestRegs.gao.gov*, or by facsimile at 202-512-9749.

Anthony H. Gamboa,
General Counsel.

[FR Doc. 02-4337 Filed 2-22-02; 8:45 am]

BILLING CODE 1610-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM205; Special Conditions No. 25-01-05-SC]

Special Conditions: Fairchild Dornier GmbH, Model 728-100; Sudden Engine Stoppage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Fairchild Dornier GmbH Model 728-100 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes, associated with engine size and torque load which affects sudden engine stoppage. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before April 11, 2002.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM-113), Docket No. NM205, 1601 Lind Avenue SW., Renton, Washington 98055-4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: *Docket No. NM205*. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Tom Groves, FAA, International Branch, ANM-116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (425) 227-1503; facsimile (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposed special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On May 5, 1998, Fairchild Dornier GmbH applied for a type certificate for

their new Model 728-100 airplane. The Model 728-100 airplane is a 70-85 passenger twin-engine regional jet with a maximum takeoff weight of 77,600 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Fairchild Dornier must show that the Model 728-100 airplane meets the applicable provisions of part 25, as amended by Amendments 25-1 through 25-96. Fairchild Dornier GmbH has also applied to extend the certification basis to include Amendments 25-97, 25-98, and 25-104.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model 728-100 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with 14 CFR 21.17(a)(2). Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1).

In addition to the applicable airworthiness regulations and special conditions, the Model 728-100 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92-574, the "Noise Control Act of 1972."

Novel or Unusual Design Features

The Fairchild Dornier GmbH Model 728-100 airplane will incorporate novel or unusual design features involving engine size and torque load that affect sudden engine stoppage conditions. Fairchild Dornier GmbH proposes to treat the sudden engine stoppage condition resulting from structural failure as an ultimate load condition. Section 25.361(b)(1) of part 25 specifically defines the seizure torque load, resulting from structural failure, as a limit load condition.

Discussion

The limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure (such

as compressor jamming) has been a specific requirement for transport category airplanes since 1957. The size, configuration, and failure modes of jet engines have changed considerably from those envisioned when the engine seizure requirement of § 25.361(b) was first adopted. Current engines are much larger and are now designed with large bypass fans capable of producing much larger torque loads if they become jammed. It is evident from service history that the frequency of occurrence of the most severe sudden engine stoppage events are rare.

Relative to the engine configurations that existed when the rule was developed in 1957, the present generation of engines are sufficiently different and novel to justify issuance of special conditions to establish appropriate design standards. The latest generation of jet engines are capable of producing, during failure, transient loads that are significantly higher and more complex than the generation of engines that were present when the existing standard was developed. Therefore, the FAA has determined that special conditions are needed for the Fairchild Dornier GmbH Model 728-100 airplane.

In order to maintain the level of safety envisioned in § 25.361(b), a more comprehensive criteria is needed for the new generation of high bypass engines. The proposed special conditions would distinguish between the more common seizure events and those rarer seizure events resulting from structural failures. For these rarer but severe seizure events, the proposed criteria could allow some deformation in the engine supporting structure (ultimate load design) in order to absorb the higher energy associated with the high bypass engines, while at the same time protecting the adjacent primary structure in the wing and fuselage by providing a higher safety factor. The criteria for the more severe events would no longer be a pure static torque load condition, but would account for the full spectrum of transient dynamic loads developed from the engine failure condition.

Applicability

As discussed above, these special conditions are applicable to the Fairchild Dornier GmbH Model 728-100 airplane. Should Fairchild Dornier apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of section 21.101(a)(1). Fairchild Dornier has submitted applications for certification

of both increased and reduced passenger capacity derivatives of the Model 728–100 airplane. These derivative models are designated the Model 928–100 airplane and the Model 528–100 airplane, respectively. As currently proposed, these derivative models share the same design feature of a high-bypass ratio fan jet engine as the Model 728–100 airplane, and it is anticipated that they will be included in the applicability of these proposed special conditions.

Conclusion

This action affects only certain novel or unusual design features on the Fairchild Dornier GmbH Model 728–100 airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Fairchild Dornier GmbH Model 728–100 airplanes.

1. *Sudden Engine Stoppage.* In lieu of compliance with 14 CFR 25.361(b), the following special conditions apply:

a. For turbine engine installations, the engine mounts, pylons and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

(1) Sudden engine deceleration due to a malfunction which could result in a temporary loss of power or thrust.

(2) The maximum acceleration of the engine.

b. For auxiliary power unit installations, the power unit mounts and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

(1) Sudden auxiliary power unit deceleration due to malfunction or structural failure.

(2) The maximum acceleration of the auxiliary power unit.

c. For engine supporting structure, an ultimate loading condition must be

considered that combines 1g flight loads with the transient dynamic loads resulting from each of the following:

(1) The loss of any fan, compressor, or turbine blade.

(2) Where applicable to a specific engine design, and separately from the conditions specified in paragraph 1.(c)(1), any other engine structural failure that results in higher loads.

d. The ultimate loads developed from the conditions specified in paragraphs (c)(1) and (c)(2) above are to be multiplied by a factor of 1.0 when applied to engine mounts and pylons and multiplied by a factor of 1.25 when applied to adjacent supporting airframe structure.

Issued in Renton, Washington, on February 13, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–4411 Filed 2–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM212; Notice No. 25–02–04–SC]

Special Conditions: Airbus Industrie, Model A340–500 and –600 Airplanes; Sudden Engine Stoppage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for Airbus Industries Model A340–500 and –600 airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes, associated with engine size and torque load, which affects sudden engine stoppage. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: Comments must be received on or before March 27, 2002.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport

Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM212, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM212. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Tim Backman, FAA, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2797; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comments closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expenses or delay. We may change this proposal for special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On November 14, 1996, Airbus Industries applied for an amendment to U.S. type certificate (TC) A43NM to include the new Models A340–500 and –600. These models are derivatives of the A340–300 airplane, which is approved under the same TC.

The Model A340–500 fuselage is a 6-frame stretch of the Model A340–300