

# 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. 2002–NM–91–AD]

RIN 2120–AA64

#### **Airworthiness Directives; Various Transport Category Airplanes on Which Cargo Restraint Strap Assemblies Have Been Installed per Supplemental Type Certificate (STC) ST01004NY**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** This document revises an earlier proposed airworthiness directive (AD), applicable to various transport category airplanes on which cargo restraint strap assemblies have been installed per STC ST01004NY. That action would have required revising the airplane flight manual to include a procedure for discontinuing the use of certain cargo restraint strap assemblies installed per STC ST01004NY, if used as the only cargo restraint. This new action revises the proposed rule by adding a requirement to revise the airplane weight and balance manual to include the same procedure described previously. The actions specified by this new proposed AD are intended to prevent shifting or unrestrained cargo in the cargo compartment, which could cause an unexpected change in the airplane's center of gravity, damage to the airplane structure and/or flight control system, a hazard to the flightcrew, and/or possible loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by August 30, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport

Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–91–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain “Docket No. 2002–NM–91–AD” in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

**FOR FURTHER INFORMATION CONTACT:** Jon Hjelm, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stuart Ave., suite 410, Westbury, New York 11590; telephone (516) 228–7323; fax (516) 794–5531.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket Number 2002–NM–91–AD.” The postcard will be date stamped and returned to the commenter.

#### **Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–91–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

#### **Discussion**

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to various transport category airplanes on which cargo restraint strap assemblies have been installed per Supplemental Type Certificate (STC) ST01004NY, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on July 29, 2003 (68 FR 44495). That NPRM proposed to require revising the airplane flight manual (AFM) to include a procedure for discontinuing the use of certain cargo restraint strap assemblies installed per STC ST01004NY, if used as the only cargo restraint. That NPRM was prompted by reports of incorrect installation of cargo restraint strap assemblies having part number (P/N) 1519–MCIDS. The reports also indicate the use of incorrect pallet and strap combinations, and the use of straps inappropriate for the type of cargo being restrained. Shifting or unrestrained cargo due to improper installation of cargo straps could cause an unexpected change in the airplane's center of gravity, damage to the airplane structure and/or flight control system, a hazard to the flightcrew, and/or possible loss of controllability of the airplane.

#### **Comments Received**

Due consideration has been given to the comments received in response to the original NPRM.

### **Support for the Original NPRM**

Several commenters generally support the original NPRM.

### **Request To Clarify the Intent of the Original NPRM**

Several commenters state that the wording of the original NPRM is confusing. The commenters indicate that they misinterpreted the intent of the original NPRM and concluded that the NPRM prohibits the use of cargo restraint strap assemblies having P/N 1519-MCIDS. The commenters suggest that the original NPRM be revised to clarify that the cargo restraint straps listed in the STC are not the cause of the unsafe condition, and that these straps may be used in accordance with the airplane manufacturers' weight and balance manuals (WBM), when strap installations are appropriate.

We agree that the straps listed in the STC are not the cause of the unsafe condition. The actual intent of the original NPRM is to prohibit the use of supplemental type certificate (STC) ST01004NY to install cargo restraint strap assemblies. We also agree with the commenters' request to allow use of the straps per the WBM under certain conditions. Paragraph (a) of this supplemental NPRM has been revised to clarify that the use of STC ST01004NY shall be discontinued as the only means of installing certain cargo restraint straps, and that these straps may be used if they are installed per the airplane manufacturers' WBMs, and within the strap rated load (5,000 lbs.).

### **Request To Require Revising the Airplane WBM**

Two commenters request a change to the original NPRM to require revising the airplane WBM. (The original NPRM requires revising the Limitations Section of the AFM to include information to discontinue the use of certain cargo restraint straps as the only means of securing cargo.) The commenters note that cargo-loading personnel do not refer to the AFM, but they do look at the cargo loading guidelines included in the airplane WBM.

We agree with the commenters' request for the reason given by the commenters. Paragraph (a) of this supplemental NPRM has been revised to require revising both the AFM and the WBM by inserting text that prohibits the use of STC ST01004NY to install cargo restraint strap assemblies having P/N 1519-MCIDS, if the strap assemblies are the only means of cargo restraint.

### **Request To Address Another Unsafe Condition**

Two commenters note the original NPRM allows continued use of the cargo restraint straps listed in STC ST01004NY as supplemental cargo restraints in conjunction with TSO C90c nets. The commenters state that this could create another unsafe condition because of the relative stiffness of the straps compared to the cargo nets; the straps would carry most of the cargo load. The commenters suggest that the original NPRM be changed to eliminate this potentially unsafe combination of cargo restraint straps and cargo nets.

We agree with the commenters' request. We find that combining the cargo restraint straps listed in STC ST01004NY with cargo nets could create a potentially unsafe condition. Therefore, we have removed the provision allowing the use of the subject cargo restraint straps in conjunction with cargo nets from paragraph (a) of this supplemental NPRM.

### **Request To Address Cargo Restrained to the Airplane Floor**

Several commenters note that the original NPRM does not address cargo that is directly restrained to the structure of the airplane floor. They suggest that the original NPRM be revised to address this situation.

We agree with the commenters' request. We have changed paragraph (a) of this supplemental NPRM to allow continued use of cargo restraint straps as supplemental restraints to secure cargo to TSO C90c/NAS3610 pallets, or to the cargo restraint fittings in the airplane floor, per the WBM, and within the strap rated load (5,000 lbs.).

### **Request for Alternative Cargo Restraint Procedures**

One commenter notes that the original NPRM prohibits further use of STC ST01004NY, but does not provide instructions for alternative cargo restraint procedures. We infer that the commenter is requesting that additional information be included in the original NPRM to address alternative procedures for restraining cargo.

We do not agree. The supplemental NPRM does not include alternative procedures for restraining cargo in lieu of using STC ST01004NY as the intent of this action is to prohibit further use of STC ST01004NY to install certain cargo restraint straps, not to provide alternative cargo restraint procedures. After appropriate installation instructions are developed in cooperation with the STC holder, the STC may be amended. Operators should

follow the existing cargo loading and restraint guidelines in the applicable airplane WBM. We have not changed this supplemental NPRM regarding this issue.

### **Request To Create New Technical Standard Order (TSO)**

Several commenters suggest that there is a larger problem regarding cargo restraint straps and installation of the straps within the air transport industry. The commenters state that a new TSO should be issued regarding cargo restraint straps. The commenters also suggest that an industry standard for acceptable strap installation be created to ensure safety in cargo loading/restraint operations. The commenters did not request any specific changes to the original NPRM.

We acknowledge the commenters' concerns. We have been working with the Society of Automotive Engineers (SAE) to create a new TSO for cargo restraint straps based on SAE design criteria. The straps may be installed per the airplane manufacturers' cargo-loading instructions, which are contained in the applicable airplane WBM. Until the new TSO becomes available, we will consider issuing a new special airworthiness information bulletin to emphasize the need for operators to follow the existing approved cargo loading and restraint guidelines. We have not changed this supplemental NPRM regarding this issue.

### **Request To Withdraw Original NPRM**

One commenter states that STC ST01004NY is not an appropriate method for approving the use of certain cargo restraint straps because there is no type design or type certificate for cargo straps; therefore, an NPRM to prohibit the use of the STC is not necessary. We infer that the commenter requests we withdraw the original NPRM.

We do not agree with the commenter's request. An unsafe condition has been identified and an AD is the appropriate vehicle for mandating action to correct the unsafe condition. Further, the STC is the type design approval for the installation of P/N 1519-MCIDS strap assemblies, and was issued to provide specific instructions for installation of those strap assemblies. We have not changed this supplemental NPRM regarding this issue.

### **Request To Clarify Applicability of Original NPRM**

One commenter, an airplane manufacturer, states that at some point in the future the applicability of the original NPRM may be expanded to

include airplanes that do not have STC ST01004NY installed. Another commenter states that the applicability of the original NPRM is vague and requests clarification of airplanes affected by the original NPRM.

We agree that clarification of the applicability should be provided. The basis of the applicability for this supplemental NPRM is the approved model list (AML) attached to STC ST01004NY. Only the airplane models currently listed in the AML are allowed to install STC ST01004NY, and those are the only airplanes subject to this supplemental NPRM. If we need to expand the applicability of this supplemental NPRM in the future, another AD action will be published in the **Federal Register** notifying the public of the proposed change. We have not changed this supplemental NPRM regarding this issue.

#### **Request To Revise Cost Impact**

One commenter states that the cost impact section of the original NPRM addresses only the cost of the AFM revision, and fails to take into consideration the financial impact of the consequences of the change, specifically the effect on cargo shippers and carriers. The same commenter also states that the cost impact fails to address passenger-carrying narrow-bodied and wide-bodied airplanes that also use the specified cargo restraint straps to secure cargo or baggage to tie-down locations or contoured pallets. Another commenter mentions the economic impact to operators when cargo has to be tied down to the airplane floor, which results in the adjacent cargo pallet positions remaining empty. That same commenter also states that tied-down cargo results in longer ground time, which also costs money. We infer that the commenters request a revision to the cost impact section of the original NPRM.

We acknowledge these commenters' concerns regarding the larger scale economic impact of the supplemental NPRM. However, as stated in the Cost Impact section, only costs associated with accomplishment of the actions required by the AD are addressed in an AD. We do not include an estimate of the long-term financial impact to operators. ADs require specific actions to address specific unsafe conditions and consequently may appear to impose costs that would not otherwise be borne by operators. However, because operators have a general obligation to maintain their airplanes in an airworthy condition, this appearance is deceptive. Attributing those costs solely to this AD is unrealistic because, in the interest of

maintaining safe airplanes, prudent operators would accomplish these actions even if they were not required by the AD.

In regard to the passenger-carrying airplanes, the Cost Impact section does address those airplanes because they are included in the applicability of the supplemental NPRM. The applicability is not limited to cargo airplanes, but includes various transport category airplanes on which cargo restraint strap assemblies have been installed per STC ST01004NY. We have not changed this supplemental NPRM in regard to the larger scale economic impact of the NPRM. We have changed this supplemental NPRM to include the estimated cost of revising the WBM.

#### **Request To Correct Referenced Part Number**

One commenter states that P/N 1519-MCIDS, as cited in the original NPRM, is incorrect and should be cited as P/N 1519-MC1DS (the 7th character should be the numeral "1" and not the capital letter "I"). The commenter states that the mistake probably originated from STC ST01004NY, which listed the 7th character of the P/N as an "I."

We do not agree with the commenter's request. During the STC application process, the STC holder for STC ST01004NY submitted a data package to the FAA. The drawing included in the data package references the 7th character of the P/N as an "I" not a "1." The P/N referenced in the original NPRM is correct. We have not changed this supplemental NPRM regarding this issue.

#### **Conclusion**

Since certain changes described above expand the scope of the original NPRM, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

#### **Changes to 14 CFR Part 39/Effect on the Original NPRM**

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, we no longer need to include it in each individual AD. In this supplemental NPRM, paragraph (c) of the original NPRM has been removed, and paragraph (b) of the original NPRM has been revised to only identify the office authorized to approve AMOCs.

#### **Cost Impact**

There are approximately 1,150 transport category airplanes of the affected design in the worldwide fleet. We estimate that 735 airplanes of U.S. registry would be affected by this supplemental NPRM.

It would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, at an average labor rate of \$65 per work hour. Based on this figure, the cost impact of the proposed AFM revision is estimated to be \$47,775, or \$65 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed WBM revision, at an average labor rate of \$65 per work hour. Based on this figure, the cost impact of the proposed WBM revision is estimated to be \$47,775, or \$65 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

#### **Regulatory Impact**

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that 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) if promulgated, 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. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding the following new airworthiness directive:

**Transport Category Airplanes:** Docket 2002–NM–91–AD.

**Applicability:** The following transport category airplanes, certificated in any category, on which cargo restraint strap assemblies part number (P/N) 1519–MCIDS have been installed per Supplemental Type Certificate (STC) ST01004NY.

TABLE 1.—MANUFACTURERS/AIRPLANE MODELS

Manufacturer	Airplane model
Aerospatiale .....	ATR42 and ATR72 series airplanes.
Airbus .....	A300 B2 and A300 B4 series airplanes; A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600) series airplanes; A310, A320, A321, A330, and A340 series airplanes.
Boeing .....	707–100, 707–200, 707–100B, and 707–100B series airplanes; 727, 737, 747, 757, and 767 series airplanes.
British Aerospace .....	BAe 146 series airplanes and Avro 146–RJ series airplanes.
Fokker .....	F27 and F.28 series airplanes.
Lockheed .....	188A and 188C airplanes, and L–1011 series airplanes.
Maryland Air Industries, Inc. ....	F–27 series airplanes and FH–227 series airplanes.
McDonnell Douglas .....	DC–7, DC–7B, and DC–7C airplanes; DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes; DC–8F–54 and DC–8F–55 airplanes; DC–8–61, DC–8–62, and DC–8–63 airplanes; DC–8–61F, DC–8–62F, and DC–8–63F airplanes; DC–8–71, DC–8–72, and DC–8–73 airplanes; DC–8–71F, DC–8–72F, and DC–8–73F airplanes; DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; DC–9–21 airplanes; DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, DC–9–51, DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; MD–88 airplanes; MD–90–30 airplanes; 717–200 airplanes; DC–10–10 and DC–10–10F airplanes; DC–10–15 airplanes; DC–10–30 and DC–10–30F (KDC–10) airplanes; DC–10–40 and DC–10–40F airplanes; MD–10–10F and MD–10–30F airplanes; and MD–11 and MD–11F airplanes.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent shifting or unrestrained cargo in the cargo compartment, which could cause an unexpected change in the airplane's center of gravity, damage to the airplane structure and/or flight control system, a hazard to the flightcrew, and/or possible loss of controllability of the airplane, accomplish the following:

**Revisions to Airplane Flight Manual (AFM) and Weight and Balance Manual (WBM)**

(a) Within 14 days after the effective date of this AD, revise the Limitations Section of the applicable AFM, and the cargo-loading procedures in the applicable WBM, to include the following information (this may be accomplished by inserting a copy of this AD into the AFM and the WBM):

“Discontinue the use of Supplemental Type Certificate (STC) ST01004NY to install Airline Container Manufacturing Company, Inc., cargo restraint straps, part number 1519–MCIDS, as the only means of securing cargo to Technical Standard Order (TSO) C90c/NAS3610 pallets. Such cargo restraint straps may continue to be used as supplemental restraints to secure cargo to TSO C90c/NAS3610 pallets, or to the cargo restraint fittings in the airplane floor, per the airplane manufacturer's weight and balance manuals, and within the strap rated load (5,000 lbs.).”

**Note 1:** If the statement in paragraph (a) of this AD has been incorporated into the general revisions of the AFM and the WBM, the general revisions may be incorporated into the AFM and the WBM, and the copy of this AD may then be removed from the AFM and the WBM.

**Alternative Methods of Compliance**

(b) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Issued in Renton, Washington, on July 27, 2004.

**Kyle L. Olsen,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 04–17764 Filed 8–3–04; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2004–18759; Directorate Identifier 2003–NM–280–AD]

**RIN 2120–AA64**

**Airworthiness Directives; Boeing Model 707–100, –100B, –300, –300B (–320B Variant), –300C, and –E3A (Military) Series Airplanes; Model 720 and 720B Series Airplanes; Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes; and Model 747 Series Airplanes**

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

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

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing transport category airplanes. This proposed AD would require repetitive tests of the overwing fuel fill ports for certain wing tanks; an electrical bonding resistance test between the bulkhead fittings of the