Related Information

(j) French airworthiness directive F–2005–125, dated July 20, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use Airbus Service Bulletin A300–27–6057, excluding Appendix 01, dated May 17, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on March 20, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–5555 Filed 3–27–07; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25336; Directorate Identifier 2006–NM–070–AD; Amendment 39–15002; AD 2007–07–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, –500, –600, –700, –800 and –900 Series Airplanes; and Model 757–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 737–300, –400, –500, –600, –700, –800 and –900 series airplanes; and Model 757–200 and –300 series airplanes. This AD requires modifying the activation mechanism in the chemical oxygen generator of each passenger service unit (PSU). This AD results from several reports indicating that some chemical oxygen generators failed to activate during in-flight decompression events. These failures were due to fracture of components between the passenger oxygen mask and the release pin in the oxygen generator. We are issuing this AD to prevent failure of the activation mechanism in the chemical oxygen generator, which could result in the unavailability of supplemental oxygen and possible incapacitation of passengers and cabin crew during an in-flight decompression.

DATES: This AD becomes effective May 2, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 2, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Susan Letcher, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6474; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 737–300, –400, –500, –600, –700, –800 and –900 series airplanes; and Model 757–200 and –300 series airplanes. That NPRM was published in the **Federal Register** on July 13, 2006 (71 FR 39593). That NPRM proposed to require modifying the activation mechanism in the chemical oxygen generator of each passenger service unit (PSU).

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Support for the NPRM

Boeing and AirTran support the NPRM.

Request To Change Compliance Time

The Air Transport Association (ATA), on behalf of its member, Delta Airlines, asks that the compliance time for accomplishing the modification be changed from 60 months to 72 months. Delta states that this would better align with airplane heavy maintenance visits.

We do not agree with ATA and Delta. The commenters provided no technical justification for revising this compliance time. Chemical oxygen generators failing to activate during in-flight decompression events is a significant safety issue; therefore, we have determined that the proposed 60-month compliance time is warranted. This determination is based on the effectiveness of the modification and the fact that failure of the activation mechanism of the chemical oxygen generator could result in the unavailability of supplemental oxygen and possible incapacitation of passengers and cabin crew during an in-flight decompression. In developing an appropriate compliance time for this AD, we considered those safety issues, as well as the manufacturer recommendations, the availability of necessary repair parts, and the practical aspect of accomplishing the required modification within an interval of time that corresponds to the normal maintenance schedules of most affected operators. In light of these factors, we have determined that the 60-month initial compliance time, as proposed, is appropriate. We do not find it necessary to change the AD in this regard.

Request To Publish Service Information/Incorporate by Reference in NPRM

The Modification and Replacement Parts Association (MARPA) states that ADs are based on service information that originates from the type certificate holder or its suppliers. MARPA adds that manufacturers' service documents are privately authored instruments, generally having copyright protection against duplication and distribution. MARPA states that when a service document is incorporated by reference into a public document, such as an AD, pursuant to 5 U.S.C. 552(a) and 1 CFR part 51, it loses its private, protected status and becomes a public document. MARPA notes that if a service document is used as a mandatory element of compliance, it should not simply be referenced, but should be incorporated by reference. MARPA believes that

public laws, by definition, should be public, which means they cannot rely upon private writings for compliance. MARPA adds that the legal interpretation of a document is a question of law, not of fact; therefore, unless the service document is incorporated by reference, it cannot be considered. MARPA is concerned that failure to incorporate essential service information could result in a court decision invalidating the AD.

MARPA also states that service documents incorporated by reference should be made available to the public by publication in the Docket Management System (DMS), keyed to the action that incorporates those documents. MARPA notes that the stated purpose of the incorporation by reference method is brevity, to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals. MARPA adds that, traditionally, ''affected individuals'' means aircraft owners and operators, who are generally provided service information by the manufacturer. MARPA adds that a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA notes that this new class includes maintenance and repair organizations, component servicing, and/or servicing alternatively certified parts under section 21.303 (''Replacement and modification parts'') of the Federal Aviation Regulations (14 CFR 21.303). MARPA notes that the concept of brevity is now nearly archaic as documents exist more frequently in electronic format than on paper. Therefore, MARPA asks that the service documents deemed essential to the accomplishment of the NPRM be incorporated by reference into the regulatory instrument and published in DMS.

We acknowledge MARPA's requests. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the documents necessary for the accomplishment of the requirements mandated by this AD. Further, we point out that while documents that are incorporated by reference do become public information, as noted by the commenter, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

In regard to MARPA's request to post service bulletins on the Department of Transportation's DMS, we are currently in the process of reviewing issues surrounding the posting of service bulletins on the DMS as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. No change to the AD is necessary in response to these comments.

Request To Change Costs of Compliance Section

ATA, on behalf of its member, Delta Airlines, states that since the NPRM is written against airplanes and not individual PSUs, it should reflect the cost per airplane. Delta states that its approximate cost per Model 757 airplane is over $10,000; the total cost for its Model 757 fleet is in excess of $350,000. Delta adds that for its Model 737–800 fleet, 71 airplanes are affected, each currently having 54 PSUs installed. Delta states that the approximate cost per Model 737–800 airplane is over $6,000; the total cost for its Model 737–800 fleet is over $440,000.

We agree with the commenters. We have provided the approximate number of PSUs per airplane that are necessary to do the modification in the Costs of Compliance section below.

Clarify Availability of Parts

Continental Airlines has concerns regarding the availability of Boeing's material stock (*i.e.*, service bulletin kits), as well as those ancillary PSU parts which may be needed during the modification.

We infer that Continental wants verification of available parts. We have confirmed with Boeing that an ample number of required parts will be available to modify the U.S. fleet within the proposed compliance time. In light of this fact, we do not find it necessary to change the AD in this regard.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 3,283 airplanes of the affected design in the worldwide fleet. This AD affects about 815 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD. The cost of the modification depends on the number of PSUs per airplane. The cost to modify all airplanes ranges from $4,342,320 up to $12,506,175.

ESTIMATED COSTS

Airplane Model	Work hours	Number of PSUs	Average labor rate per hour	Parts cost per PSU	Cost per airplane
737–500 and –600	1 per PSU	Between 36 and 40	$80	Between $68 and $75	Between $5,328 and $6,200.
737–300 and –700	1 per PSU	Between 40 and 50	80	Between $68 and $75	Between $5,920 and $7,750.
737–400 and –800	1 per PSU	Between 43 and 63	80	Between $68 and $75	Between $6,364 and $9,765.
737–900	1 per PSU	Between 58 and 63	80	Between $68 and $75	Between $8,584 and $9,765.
757–200	1 per PSU	Between 60 and 80	80	Between $68 and $75	Between $8,880 and $12,400.
757–300	1 per PSU	Between 70 and 99	80	Between $68 and $75	Between $10,360 and $15,345.

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 have determined that this AD will not have federalism implications under Executive Order 13132. This AD will 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 that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under 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 AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2007–07–02 Boeing: Amendment 39–15002. FAA–2006–25336; Directorate Identifier 2006–NM–070–AD.

Effective Date

(a) This AD becomes effective May 2, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–300, -400, -500, -600, -700, -800 and -900 series airplanes; and Model 757–200 and -300 series airplanes; certificated in any category; as identified in the applicable service bulletin in Table 1 of this AD.

TABLE 1.—SERVICE BULLETINS

Boeing special attention Service Bulletin	Dated—	Applicable to model/series—
737–25–1545	September 8, 2005	737–600, –700, –800, and –900.
737–25–1548	November 22, 2005	737–300, –400, and –500.
757–25–0284	November 22, 2005	757–200.
757–25–0285	November 22, 2005	757–300.

Unsafe Condition

(d) This AD results from several reports indicating that some chemical oxygen generators failed to activate during in-flight decompression events. These failures were due to fracture of components between the passenger oxygen mask and the release pin in the oxygen generator. We are issuing this AD to prevent failure of the activation mechanism of the chemical oxygen generator, which could result in the unavailability of supplemental oxygen and possible incapacitation of passengers and cabin crew during an in-flight decompression.

Compliance

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

Modification

(f) Within 60 months after the effective date of this AD: Modify the activation mechanism in the chemical oxygen generator of each passenger service unit (PSU) by doing all the applicable actions specified in the Accomplishment Instructions of the applicable service bulletin specified in Table 1 of this AD.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(h) You must use the applicable service bulletin specified in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207 for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Boeing special attention Service Bulletin	Date
737–25–1545	September 8, 2005.
737–25–1548	November 22, 2005.
757–25–0284	November 22, 2005.
757–25–0285	November 22, 2005.

Issued in Renton, Washington, on March 13, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–5556 Filed 3–27–07; 8:45 am]

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