

- c. revising paragraph (e)(6) introductory text;
- d. amending paragraph (e)(6)(v) by removing “or”;
- e. amending paragraph (e)(6)(vi) by removing the period and adding in its place “; or”;
- f. adding paragraph (e)(6)(vii);
- g. adding paragraph (e)(9); and by
- h. revising paragraph (g).

The additions and revisions read as follows:

§ 1003.1 Organization, jurisdiction, and powers of the Board of Immigration Appeals.

* * * * *

(e) * * *
 (4) *Affirmance without opinion.* (i) The Board member to whom a case is assigned may, in that member’s discretion, affirm the decision of the DHS immigration officer or the immigration judge, without opinion, if the Board member determines that the result reached in the decision under review was correct with respect to the issues raised by either party on appeal; that any errors in the decision under review raised by either party on appeal were harmless or nonmaterial; and that (A) The issues on appeal are squarely controlled by existing Board or federal court precedent and do not involve the application of precedent to a novel factual situation; or

(B) The factual and legal issues raised by either party on appeal are not so substantial that the case warrants the issuance of a written opinion in the case.

* * * * *

(iii) A decision by the Board under this paragraph (e)(4), or under paragraphs (e)(5) or (e)(6) of this section, carries the presumption that the Board properly and thoroughly considered all issues, arguments, claims, and record evidence raised or presented by the parties, whether or not specifically mentioned in the decision. In addition, a decision by the Board under this paragraph (e)(4), or under paragraphs (e)(5) or (e)(6), is based on issues and claims of error raised on appeal by the parties and is not to be construed as waiving a party’s obligation to exhaust administrative remedies by raising in a meaningful manner all issues and claims of error in the first instance on appeal to the Board. In any decision under paragraphs (e)(5) or (e)(6) of this section, the Board may, on its own motion and in the exercise of discretion, rule on any issue not raised by the parties in its decision.

* * * * *

(6) *Panel decisions.* Cases may be assigned for review by a three-member

panel if the case presents one of these circumstances:

* * * * *

(vii) The need to resolve a complex, novel, or unusual issue of law or fact.

* * * * *

(9) The provisions of paragraphs (e)(4)(i), (e)(5), and (e)(6) of this section are intended to reflect an internal agency directive for the purpose of efficient management and disposition of cases pending before the Board, and do not, and shall not be interpreted to, create any substantive or procedural rights enforceable before any immigration judge or the Board, or any court.

* * * * *

(g) *Decisions as precedents.*—(1) *In general.* Except as Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the Board and decisions of the Attorney General shall be binding on all officers and employees of the Department of Homeland Security or immigration judges in the administration of the immigration laws of the United States.

(2) *Precedent decisions.* Selected decisions designated by the Board, decisions of the Attorney General, and decisions of the Secretary of Homeland Security as provided in paragraph (i) of this section shall serve as precedents in all proceedings involving the same issue or issues.

(3) *Designation of precedents.* By majority vote of the permanent Board members, by majority vote of the permanent Board members assigned to a three-member panel, or as directed by the Attorney General or his designee, selected decisions of the Board issued by a three-member panel or by the Board en banc may be designated to serve as precedents in all proceedings involving the same issue or issues. Under procedures established by the Chairman or the Board en banc, a panel shall provide notice to the Board en banc before publishing a precedent decision, in order to allow the Board to determine whether to consider the case en banc as provided in paragraph (a)(5) of this section. In determining whether to publish a precedent decision, the Board may take into account relevant considerations, in the exercise of discretion, including among other matters:

- (i) Whether the case involves a substantial issue of first impression;
- (ii) Whether the case involves a legal, factual, procedural, or discretionary issue that can be expected to arise frequently in immigration cases;

(iii) Whether the decision announces a new rule of law, or modifies or clarifies a rule of law or prior precedent;

(iv) Whether the case involves a conflict in decisions by immigration judges, the Board, or the federal courts;

(v) Whether there is a need to achieve, maintain, or restore national uniformity of interpretation of issues under the immigration laws or regulations; and

(vi) Whether the case warrants publication in light of other factors that give it general public interest.

* * * * *

Dated: June 5, 2008.
Michael B. Mukasey,
Attorney General.
 [FR Doc. E8–13435 Filed 6–17–08; 8:45 am]
BILLING CODE 4410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0640; Directorate Identifier 2008–NM–070–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, 747–400D, and 747–400F 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 Boeing Model 747–400, 747–400D, and 747–400F series airplanes. This proposed AD would require installing an extension tube to the existing pump discharge port of the scavenge pump on the outboard side of the center fuel tank in the main fuel tank #2. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent a fire or explosion in the fuel tank and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by August 4, 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, P.O. Box 3707, Seattle, Washington 98124-2207.

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: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6501; fax (425) 917-6590.

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-2008-0640; Directorate Identifier 2008-NM-070-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.

As a result of the SFAR 88 design review activity, Boeing has found that certain single failure modes within the electric scavenge pump could cause heating and sparking, which could create a potential ignition source inside the main fuel tank #2. This condition, if not corrected, could result in a fire or explosion in the main fuel tank #2 and consequent loss of the airplane.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 747-28-

2260, dated March 13, 2008. The service bulletin describes procedures for installing an extension tube to the existing pump discharge port of the scavenge pump on the outboard side of the center fuel tank in the main fuel tank #2.

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 the(se) same type design(s). 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 31 airplanes of U.S. registry. We also estimate that it would take about 16 work-hours per product to comply with this proposed AD. The average labor rate is \$80 per work-hour. Required parts would cost about \$900 per product. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be \$67,580 fleet cost, or \$2,180 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.

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:

Boeing: Docket No. FAA-2008-0640; Directorate Identifier 2008-NM-070-AD.

Comments Due Date

- (a) We must receive comments by August 4, 2008.

Affected ADs

- (b) None.

Applicability

(c) This AD applies to Boeing Model 747-400, 747-400D, and 747-400F series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 747-28-2260, dated March 13, 2008.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent a fire or explosion in the fuel tank and consequent loss of the airplane.

Compliance

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

Installation

(f) Within 60 months after the effective date of this AD, install an extension tube to the existing pump discharge port of the scavenge pump on the outboard side of the center fuel tank in the main fuel tank #2, in accordance with the Accomplishment

Instructions of Boeing Special Attention Service Bulletin 747-28-2260, dated March 13, 2008.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office (SACO), FAA, ATTN: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, SACO, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6501; fax (425) 917-6590; 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 June 6, 2008.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. E8-13714 Filed 6-17-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-100464-08]

RIN 1545-BH50

Accrual Rules for Defined Benefit Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations providing guidance on the application of the accrual rule for defined benefit plans under section 411(b)(1)(B) of the Internal Revenue Code (Code) in cases where plan benefits are determined on the basis of the greatest of two or more separate formulas. These regulations would affect sponsors, administrators, participants, and beneficiaries of defined benefit plans. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by September 16, 2008. Outlines of topics to be discussed at the public hearing scheduled for October 15, 2008, at 10 a.m. must be received by September 24, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG 100464-08), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG 100464-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-100464-08). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Lauson C. Green or Linda S. F. Marshall at (202) 622-6090; concerning submissions of comments, the hearing, and/or being placed on the building access list to attend the hearing, Richard A. Hurst at Richard.A.Hurst@irs.counsel.treas.gov or at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed Income Tax Regulations (26 CFR part 1) under section 411(b) of the Code.¹

Section 401(a)(7) provides that a trust is not a qualified trust under section 401 unless the plan of which such trust is a part satisfies the requirements of section 411 (relating to minimum vesting standards).

Section 411(a) requires a qualified plan to provide that an employee's right to the normal retirement benefit is nonforfeitable upon attainment of normal retirement age and that an employee's right to his or her accrued benefit is nonforfeitable upon completion of the specified number of years of service under one of the vesting schedules set forth in section 411(a)(2). Section 411(a)(7)(A)(i) defines a participant's accrued benefit under a defined benefit plan as the employee's accrued benefit determined under the plan, expressed in the form of an annual benefit commencing at normal retirement age, subject to an exception

¹ Section 204(b) of the Employee Retirement Income Security Act of 1974, Public Law 93-406 (88 Stat. 829), as amended (ERISA), sets forth rules that are parallel to those in section 411(b) of the Code. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these proposed regulations for purposes of ERISA, as well as the Code. Thus, these proposed Treasury regulations issued under section 411(b)(1)(B) of the Code would apply as well for purposes of section 204(b)(1)(B) of ERISA.