

determination is whether the D/GC's determination was based on clear error of fact or law.

**§ 134.709 When will a Judge dismiss an appeal?**

(a) The presiding Judge will dismiss the appeal if the appeal is untimely filed under § 134.703.

(b) The matter has been decided or is the subject of adjudication before a court of competent jurisdiction over such matters. However, once an appeal has been filed, initiation of litigation of the matter in a court of competent jurisdiction will not preclude the Judge from rendering a final decision on the matter.

**§ 134.710 Who can file a response to an appeal petition and when must such a response be filed?**

Although not required, any person served with an appeal petition may file and serve a response supporting or opposing the appeal if he or she wishes to do so. If a person decides to file a response, the response must be filed within 7 business days after service of the appeal petition. The response should present argument.

**§ 134.711 Will the Judge permit discovery and oral hearings?**

Discovery will not be permitted, and oral hearings will not be held.

**§ 134.712 What are the limitations on new evidence?**

The Judge may not admit evidence beyond the written protest file nor permit any form of discovery. All appeals under this subpart will be decided solely on a review of the evidence in the written protest file, arguments made in the appeal petition, and response(s) filed thereto.

**§ 134.713 When is the record closed?**

The record will close when the time to file a response to an appeal petition expires pursuant to 13 CFR 134.710.

**§ 134.714 When must the Judge issue his or her decision?**

The Judge shall issue a decision, insofar as practicable, within 15 business days after close of the record.

**§ 134.715 Can a Judge reconsider his decision?**

(a) The Judge may reconsider an appeal decision within 20 calendar days after issuance of the written decision. Any party who has appeared in the proceeding, or SBA, may request reconsideration by filing with the Judge and serving a petition for reconsideration on all the parties to the appeal within 20 calendar days after service of the written decision. The

request for reconsideration must clearly show an error of fact or law material to the decision. The Judge may also reconsider a decision on his or her own initiative.

(b) The Judge may remand a proceeding to the D/GC for a new WOSB or EDWOSB determination if the D/GC fails to address issues of decisional significance sufficiently, does not address all the relevant evidence, or does not identify specifically the evidence upon which it relied. Once remanded, OHA no longer has jurisdiction over the matter, unless a new appeal is filed as a result of the new WOSB or EDWOSB determination.

**Sandy Baruah,**

*Acting Administrator.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA-2008-0149; Directorate Identifier 2007-NM-319-AD; Amendment 39-15651; AD 2008-17-13]**

**RIN 2120-AA64**

**Airworthiness Directives; Boeing Model 737-100, -200, -200C, -300, -400, and -500 Series Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Boeing Model 737-100, -200, -200C, -300, -400, and -500 series airplanes. This AD requires replacing the existing straight-to-90-degree hose assembly for the Lavatory "A" water supply. The replacement is a new straight hose assembly and a separate 90-degree elbow fitting. This AD results from a report of a separated hose assembly for the passenger water system. We are issuing this AD to prevent a water leak into the flight deck ceiling, which could result in an electrical short and possible loss of several functions essential to safe flight.

**DATES:** This AD is effective November 5, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 5, 2008.

**ADDRESSES:** 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800-647-5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:**

Marcia Smith, 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) 917-6484; fax (425) 917-6590.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 737-100, -200, -200C, -300, -400, and -500 series airplanes. That NPRM was published in the **Federal Register** on February 8, 2008 (73 FR 7488). That NPRM proposed to require replacing the existing straight-to-90-degree hose assembly for the Lavatory "A" water supply. The replacement is a new straight hose assembly and a separate 90-degree elbow fitting.

**Comments**

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the four commenters.

**Support for the NPRM**

Boeing concurs with the contents of the proposed rule. Air Transport Association, on behalf of its member, United Airlines (UA), states that UA supports the proposed rule as drafted.

Margie Tillotson, a private citizen, has no objections to the NPRM.

**Requests To Address Parts Manufacturer Approval (PMA) Parts**

Aviation Data Research (ADR) and Modification and Replacement Parts Association (MARPA), make several comments related to PMA parts. ADR and MARPA state that the NPRM should be modified to embrace PMA alternatives to the original equipment

manufacturer (OEM) part numbers listed in Boeing Alert Service Bulletin 737-38A1054, dated August 23, 2007 (which we cited as the appropriate source of service information for accomplishing the proposed actions). ADR states that two parts could conceivably be affected by the design problems underlying the proposed action: In 1992 Parker Hannifin obtained a PMA on part number (P/N) 3112002-139 by licensure to produce a replacement part for P/N 10-60871-139; in 1996 Crane Resistoflex obtained a PMA on P/N R 23582-0366 by licensure to produce a replacement part for P/N 10-60871-125.

ADR points out that under the wording of the NPRM, these parts, which presumably suffer the same defects as the OEM part, can be installed in place of the OEM parts. In contrast, MARPA states that it would appear that installation of PMA alternatives is forbidden, and that it is presumptuous to assume that the PMA alternatives are likely to be defective. ADR and MARPA request that the NPRM be revised to cover possible defective PMA alternative parts. MARPA adds that the AD should explicitly permit the installation of other FAA-approved replacement or modification parts. In addition, ADR states that there should be procedures "within all AD writing units" to perform PMA research any time a particular part number is affected by a discovered defect.

The FAA recognizes the need for standardization of issues related to PMA parts to which the commenter refers, and is currently in the process of reviewing issues that address the use of PMAs in ADs at the national level. However, the Transport Airplane Directorate considers that to delay this particular AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change has been made to the final rule in this regard.

We have evaluated the PMA part numbers to which the commenter refers. As a point of clarification, the part numbers that the commenter mentions, Boeing P/N 10-60871-139 (PMA replacement P/N 3112002-139) and Boeing P/N 10-60871-125 (PMA replacement P/N R 23582-0366), are replaced only at the location affected by the AD because of a change in design for that location. (These parts may be installed at other locations, and the continued use of these parts at those locations is acceptable.) We have found that Stratoflex makes replacements for both P/N 10-60871-139 and P/N 10-

60871-125. Stratoflex (originally Crane Resistoflex) P/N 23582-0366, which is a replacement for Boeing P/N 10-60871-125, is not in production but some of these parts may be installed at the location affected by this AD. PMA P/N 3112002-139 and PMA P/N R 23582-0366 are marked with both the Boeing part number and the PMA part number. Therefore, the requirements of the AD apply to these PMA parts and the PMA parts must be removed from service at the location affected by the AD. No change has been made to the final rule in this regard.

#### **Request To Make Service Information Publicly Available**

MARPA points out that, since Boeing Alert Service Bulletin 737-38A1054 is not on the public record, it does not seem to meet the criteria for incorporation by reference, in which the document must be reasonably available to and usable by the persons affected by the publication. MARPA states that the regulated industry has repeatedly complained about unavailability of service information.

We infer that MARPA would like us to make Boeing service information available online. We are currently in the process of reviewing issues surrounding the posting of service bulletins online as part of an online 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. In the meantime, these documents are available for public review at the locations specified in paragraph (i)(3) of this AD. Further questions regarding publication of documents in the **Federal Register** or incorporation by reference should be directed to the OFR. No change to the final rule is necessary in response to this comment.

#### **Conclusion**

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

#### **Costs of Compliance**

We estimate that this AD affects 779 airplanes of U.S. registry. We also estimate that it takes between 4 and 7 work-hours per airplane to comply with this AD, depending on the airplane configuration. The average labor rate is \$80 per work-hour. Required parts cost about \$400 per product. Based on these figures, we estimate the cost of this AD to the U.S. operators to be between

\$560,880 and \$747,840, or between \$720 and \$960 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**

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.

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, 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 FAA amends § 39.13 by adding the following new AD:

**2008-17-13 Boeing:** Amendment 39-15651. Docket No. FAA-2008-0149; Directorate Identifier 2007-NM-319-AD.

**Effective Date**

(a) This airworthiness directive (AD) is effective November 5, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 737-100, -200, -200C, -300, -400, and -500

series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737-38A1054, dated August 23, 2007.

**Unsafe Condition**

(d) This AD results from a report of a separated hose assembly for the passenger water system. We are issuing this AD to prevent a water leak into the flight deck ceiling, which could result in an electrical short and possible loss of several functions essential to safe flight.

**Compliance**

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

**Replacement**

(f) Within 60 months after the effective date of this AD, replace the existing straight-to-90-degree hose assembly for the Lavatory "A" water supply with a new straight hose assembly and a separate 90-degree elbow fitting, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737-38A1054, dated August 23, 2007.

**Parts Installation**

(g) As of the effective date of this AD, any hose assembly part having a part number identified in Table 1 of this AD must not be used in any location that is subject to the requirements of this AD. However, those parts may be used in other locations if not otherwise prohibited.

TABLE 1—SPARE PARTS PROHIBITED FOR THIS AD

Airplane group identified in Boeing Alert Service Bulletin 737-38A1054, dated August 23, 2007	Existing part number(s)
1 and 2 .....	10-61998-430, AS4471-08-0401, or AS4471-08-0404.
3 .....	10-61998-25 or 10-60871-125.
4 .....	10-61998-31 or 10-60871-139.

**Alternative Methods of Compliance (AMOCs)**

(h)(1) The Manager, Seattle Aircraft Certification Office, FAA, ATTN: Marcia Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM-150S, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6484; 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.

**Material Incorporated by Reference**

(i) You must use Boeing Alert Service Bulletin 737-38A1054, dated August 23, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207.

(3) You may review copies of the service information incorporated by reference 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/](http://www.archives.gov/federal_register/)

*code\_of\_federal\_regulations/ibr\_locations.html.*

Issued in Renton, Washington, on August 6, 2008.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA-2008-0947; Directorate Identifier 2008-NM-154-AD; Amendment 39-15670; AD 2008-19-03]**

**RIN 2120-AA64**

**Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes**

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Boeing Model 737-300, -400, and -500 series airplanes. This AD requires repetitive external detailed inspections or non-destructive inspections to detect cracks in the fuselage skin along the chem-mill steps at stringers S-1 and S-2R, between station (STA) 400 and STA 460, and repair if necessary. This AD

results from reports of cracks in the fuselage skin common to stringer S-1 and between STA 400 and STA 460. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin panels at the chem-mill steps, which could result in sudden fracture and failure of the fuselage skin panels, and consequent rapid decompression of the airplane.

**DATES:** This AD is effective October 16, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 16, 2008.

We must receive comments on this AD by December 1, 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.