

entity. Any individual so voting in a referendum shall certify that they are an officer or employee of the eligible entity, or an administrator, executor, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail, as instructed by the Department.

§ 1245.103 Instructions.

(a) *Referenda*. The Order shall not become effective unless the Department determines that the Order is consistent with and will effectuate the purposes of the Act; and for initial and subsequent referenda the Order is favored by a majority of the eligible persons voting in the referendum who also represent a majority of the volume of U.S. honey produced, during a representative period determined by the Department, have been engaged in the production of honey and are subject to assessments under this Order and excluding those exempt from assessment under the Order.

(b) The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(1) Determine the period during which ballots may be cast.

(2) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(3) Give reasonable public notice of the referendum:

(i) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(ii) By such other means as the agent may deem advisable.

(4) Mail to eligible U.S. producers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the Order. No person who claims to be eligible to vote shall be refused a ballot.

(5) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the

presence of an agent of a third party authorized to monitor the referendum process.

(6) Prepare a report on the referendum.

(7) Announce the results to the public.

§ 1245.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence or such appointment, shall be performed by the agent.

§ 1245.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1245.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1245.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1245.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is OMB control number 0581-0253.

Dated: March 26, 2010.

David R. Shipman,
Acting Administrator.

[FR Doc. 2010-7574 Filed 4-9-10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM426; Special Conditions No. 25-404-SC]

Special Conditions: Modification to Boeing Model 737-600/-700/-700C/-800/-900 and -900ER Series Airplanes: Rechargeable Lithium Batteries and Rechargeable Lithium-Battery Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Boeing 737-600/-700/-700C/-800/-900 and -900ER Series airplanes (hereafter referred to as "Boeing 737NG"). These airplanes, as modified by the Boeing Company, will have a novel or unusual design feature associated with the installation of rechargeable lithium batteries and rechargeable lithium-battery systems. 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: The effective date of these special conditions is April 5, 2010. We must receive your comments by May 27, 2010.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-113), Docket No. NM426, 1601 Lind Avenue SW., Renton, Washington, 98057-3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM426. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057-3356; telephone (425) 227-2432; facsimile (425) 227-1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures

would significantly delay issuance of the design approval, and thus delivery, of the affected aircraft. In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reasons for recommended changes, 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 about these special conditions. You can inspect the docket 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 preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on these special conditions, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

The Boeing Company has applied for a type-design change for the Boeing 737NG airplanes to use rechargeable lithium batteries and rechargeable lithium-battery systems in different applications, including the recorder independent power supply (RIPS). Lithium batteries have certain failure, operational, and maintenance characteristics that differ significantly from those of the nickel-cadmium and lead-acid rechargeable batteries currently approved for installation on large, transport-category airplanes. Large, high-capacity, rechargeable lithium batteries and rechargeable lithium-battery systems are a novel or unusual design feature in transport-category airplanes. The FAA is proposing this special condition to require that (1) all characteristics of rechargeable lithium battery and

rechargeable lithium-battery system installation, that could affect safe operation of the Boeing 737NG, are addressed, and (2) appropriate instructions for continued airworthiness, which include maintenance requirements, are established to ensure the availability of electrical power from the batteries when needed.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, the Boeing Company must show that the Boeing 737NG airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A16WE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type-certification basis." The regulation incorporated by reference in A16WE is 14 CFR 25.1353 at Amendment 25-38.

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 Boeing Company rechargeable lithium batteries and rechargeable lithium-battery systems because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing 737NG airplanes 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 under SECTION 611 of Public Law 92-574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in § 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a type-design change to modify any other model included on the same type certificate, to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The Boeing Company modification to Boeing 737NG airplanes will incorporate the following novel or unusual design feature: Rechargeable

lithium batteries and rechargeable lithium-battery systems.

Discussion

The current regulations governing installation of batteries in large, transport-category airplanes were derived from Civil Air Regulations (CAR) Part 4b.625(d) as part of the recodification of CAR 4b that established 14 CFR part 25 in February 1965. The new battery requirements, § 25.1353(c) (1) through (c)(4), basically reworded the CAR requirements.

Increased use of nickel-cadmium batteries in small airplanes resulted in increased incidents of battery fires and failures, which led to additional rulemaking affecting large, transport-category airplanes as well as small airplanes. On September 1, 1977, and March 1, 1978, respectively, the FAA issued § 25.1353(c)(5) and (c)(6), governing nickel-cadmium battery installations on large, transport-category airplanes.

The proposed use of rechargeable lithium batteries and rechargeable lithium-battery systems for equipment and systems on the Boeing 737NG have prompted the FAA to review the adequacy of these existing regulations. Our review indicates that the existing regulations do not adequately address several failure, operational, and maintenance characteristics of rechargeable lithium batteries and rechargeable lithium-battery systems that could affect the safety and reliability of the Boeing 737NG rechargeable lithium batteries and rechargeable lithium-battery system installations.

At present, commercial aviation has limited experience with the use of rechargeable lithium batteries and rechargeable lithium-battery systems in aviation applications. However, other users of this technology, ranging from wireless telephone manufacturers to the electric vehicle industry, have noted safety problems with lithium batteries. These problems include overcharging, over-discharging, and cell-component flammability.

1. Overcharging

In general, rechargeable lithium batteries and rechargeable lithium-battery systems are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (*i.e.*, thermal runaway) than their nickel-cadmium or lead-acid counterparts. This is especially true for overcharging, which causes heating and destabilization of the components of the cell, leading to the formation (by plating) of highly unstable

metallic lithium. Metallic lithium can ignite, resulting in a self-sustaining fire or explosion. Finally, the severity of thermal runaway, due to overcharging, increases with increasing battery capacity, due to the greater amount of liquid electrolytes in large batteries.

2. Over-discharging

Discharge of some types of rechargeable lithium batteries and rechargeable lithium-battery systems beyond a certain voltage (typically 2.4 volts) can cause corrosion of the electrodes of the cell, resulting in loss of battery capacity that cannot be reversed by recharging. This loss of capacity may not be detected by the simple voltage measurements commonly available to flight crews as a means of checking battery status—a problem shared with nickel-cadmium batteries.

3. Flammability of Cell Components

Unlike nickel-cadmium and lead-acid batteries, some types of rechargeable lithium batteries and rechargeable lithium-battery systems use liquid electrolytes that are flammable. Electrolytes can serve as a source of fuel for an external fire from a breach of the battery container.

Such problems, experienced by users of rechargeable lithium batteries and rechargeable lithium-battery systems, raise concern about the use of these batteries in commercial aviation. The intent of these proposed special conditions is to establish appropriate airworthiness standards for rechargeable lithium-battery and rechargeable lithium-battery system installations in Boeing 737NG airplanes and to ensure, as required by §§ 25.1309 and 25.601, that these battery installations are not hazardous or unreliable.

Applicability

As discussed above, these special conditions are applicable to the Boeing Company. Should the Boeing Company apply at a later date for a type-design change to modify any other model included on Type Certificate No. A16WE, to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features relating to rechargeable lithium batteries and rechargeable lithium-battery systems installed on Boeing 737NG airplanes. It is not a rule of general applicability and affects only the applicant who applied

to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

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 Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for Boeing 737NG airplanes modified by Boeing Company to install rechargeable lithium-battery systems on Boeing 737NG airplanes. These systems must be designed and installed as follows:

(1) Safe cell temperatures and pressures must be maintained during any foreseeable charging or discharging condition and during any failure of the charging or battery-monitoring system not shown to be extremely remote. The lithium-battery installation must preclude explosion in the event of those failures.

(2) Design of the lithium batteries must preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

(3) No explosive or toxic gases emitted by any lithium battery in normal operation, or as the result of any failure of the battery-charging system, monitoring system, or battery installation which is not shown to be extremely remote, may accumulate in hazardous quantities within the airplane.

(4) Installations of lithium batteries must meet the requirements of § 25.863(a) through (d).

(5) No corrosive fluids or gases that may escape from any lithium battery may damage surrounding structure or any adjacent systems, equipment, or electrical wiring of the airplane in such a way as to cause a major or more-severe failure condition, in accordance with § 25.1309 (b) and applicable regulatory guidance.

(6) Each lithium-battery installation must have provisions to prevent any hazardous effect on structure or essential systems caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

(7) Lithium-battery installations must have—

(i) A system to automatically control the charging rate of the battery, to prevent battery overheating or overcharging, and,

(ii) A battery-temperature-sensing and over-temperature-warning system with a means for automatically disconnecting the battery from its charging source in the event of an over-temperature condition, or,

(iii) A battery-failure sensing and warning system with a means for automatically disconnecting the battery from its charging source in the event of battery failure.

(8) Any lithium-battery installation the function of which is required for safe operation of the airplane must incorporate a monitoring-and-warning feature that will provide an indication to the appropriate flight crewmembers whenever the state-of-charge of the batteries has fallen below levels considered acceptable for dispatch of the airplane.

(9) The instructions for continued airworthiness required by § 25.1529 (and § 26.11) must contain maintenance steps to assure that the lithium batteries are sufficiently charged at appropriate intervals specified by the battery manufacturer. The instructions for continued airworthiness must also contain procedures to ensure the integrity of lithium batteries in spares storage to prevent the replacement of batteries, the function of which is required for safe operation of the airplane, with batteries that have experienced degraded charge-retention ability or other damage due to prolonged storage at a low state of charge. Precautions should be included in the instructions for continued-airworthiness maintenance instructions to prevent mishandling of lithium batteries, which could result in short-circuit or other unintentional damage that could result in personal injury or property damage.

Note 1: The term, “sufficiently charged” means that the battery will retain enough of a charge, expressed in ampere-hours, to ensure that the battery cells will not be damaged. A battery cell may be damaged by lowering the charge below a point where there is a reduction in the ability to charge and retain a full charge. This reduction would be greater than the reduction that may result from normal operational degradation.

Note 2: These special conditions are not intended to replace § 25.1353(b) in the certification basis of the Boeing 737NG. These special conditions apply only to rechargeable lithium batteries and rechargeable lithium-battery system installations. The requirements of § 25.1353(b) remains in effect for batteries and battery installations of Boeing 737NG that do not use lithium batteries.

Boeing must show compliance with the requirements of these special conditions by test and/or analysis. The aircraft certification office, or its designees, will find compliance in coordination with the FAA Transport Standards Staff.

Issued in Renton, Washington, on April 5, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–8218 Filed 4–9–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0831; *Airspace*
Docket No. 09–ANM–13]

Amendment of Class E Airspace; North Bend, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will modify Class D airspace at Southwest Oregon Regional Airport, North Bend, OR, to allow aircraft at Sunnyhill Airport to arrive and depart outside Class D airspace. This action is necessary for the safety and management of Instrument Flight Rules (IFR) aircraft utilizing both airports.

DATES: *Effective date*, 0901 UTC, June 3, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation

Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA, 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On November 9, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish additional controlled airspace at North Bend, OR (74 FR 57616). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class D airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying the Class D airspace area at North Bend, OR. Controlled airspace is needed extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of Southwest Oregon Regional Airport, excluding that airspace within a 1.5-mile radius of Sunnyhill Airport. The exclusion will allow aircraft at Sunnyhill Airport to arrive and depart outside the Class D airspace. This rule will enhance IFR operations at both airports.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more

detail the scope of the agency’s authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Southwest Oregon Regional Airport, North Bend, OR.

List of Subjects in 14 CFR Part 71

Airspace, incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, *Airspace Designations and Reporting Points*, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ANM OR D North Bend, OR [Modified]

Southwest Oregon Regional Airport, OR
(Lat. 43°25′01″ N., long. 124°14′49″ W.)
Sunnyhill Airport, OR
(Lat. 43°28′59″ N., long. 124°12′10″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of the Southwest Oregon Regional Airport, excluding that airspace within a 1.5-mile radius of Sunnyhill Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on April 5, 2010.

Robert E. Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–8193 Filed 4–9–10; 8:45 am]

BILLING CODE 4910–13–P