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/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on February 6, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–2507 Filed 2–15–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25892; Directorate Identifier 2006–NM–120–AD; Amendment 39–14941; AD 2007–04–09]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR Airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all EMBRAER airplanes as described previously. This AD requires inspecting to determine the part number of the left- and right-hand windshield temperature controllers. For airplanes equipped with certain windshield temperature controllers, this AD also requires replacing the attaching hardware of the power cable terminals of the windshield temperature controllers with new, improved attaching hardware; inspecting the power cable terminals for signs of melting or damage to the terminals, cable insulation, or plastic crimping ring; and performing corrective actions if necessary. This AD results from reports of smoke on the flight deck caused by damage from poor electrical contact due to loosening of the attaching hardware of the power cables of certain windshield temperature controllers. We are issuing this AD to prevent overheating of the power cable terminals of the windshield temperature controllers, which could result in smoke on the flight deck.

DATES: This AD becomes effective March 23, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 23, 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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

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 all EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. That NPRM was published in the **Federal Register** on September 26, 2006 (71 FR 56056). That NPRM proposed to require inspecting to determine the part number of the left- and right-hand windshield temperature controllers. For airplanes equipped with certain windshield temperature controllers, that NPRM also proposed to require replacing the attaching hardware of the power cable terminals of the windshield temperature controllers with new, improved attaching hardware; inspecting the power cable terminals for signs of melting or damage to the terminals, cable insulation, or plastic crimping ring; and performing corrective actions if necessary.

Comments

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

Request To Revise Consequence of Unsafe Condition

EMBRAER requests that we revise the possible consequence of the unsafe condition. EMBRAER states that it has confirmed that the unsafe condition is the result of overheating of the power cables of the windshield temperature controller due to loosening of the power cable attachment hardware, and that tests have shown that this condition may cause smoke on the flight deck, but not fire. EMBRAER therefore requests that we revise the statement ''which could result in smoke and fire on the flight deck'' to read ''which could result in smoke on the flight deck.''

We agree for the reasons stated and have revised the summary and paragraph (d) of the AD accordingly.

Request To Permit Records Check

EMBRAER requests that we revise the NPRM to permit a maintenance records check to determine if the subject windshield temperature controller is installed on the airplane. EMBRAER states that it should be acceptable to show that the subject controller is or is not installed on the airplane by examining the airplane maintenance records rather than by requiring a physical inspection of the actual installed part.

We agree for the reasons given. Therefore, we have revised paragraph (f) of the AD to permit a maintenance records check in lieu of the required inspection, provided the part number of the subject controller can be conclusively determined from that review.

Request for Publication of Service Information

One commenter, the Modification and Replacement Parts Association (MARPA), requests that we revise our procedures for incorporation by reference (IBR) of service information in ADs. MARPA asserts that ADs are frequently derived from privately-authored, copyright-protected manufacturer service documents, but that when such a document is incorporated by reference into a public document like an AD, it loses its private, protected status and becomes itself a public document. MARPA continues that public laws by definition must be public and cannot rely for compliance upon private writings, and that unless such writings are incorporated by reference, a court of law will not consider them in interpreting the AD and might invalidate the AD.

MARPA contends that IBR service documents should be published in the Docket Management System (DMS), keyed to the action that incorporates them. IBR was adopted to relieve the **Federal Register** from publishing documents already held by affected individuals, which traditionally meant aircraft owners and operators who received service information from manufacturers. However, MARPA contends that a new affected class of maintenance and repair organizations (MRO), component service and repair shops, parts purveyors and distributors, and organizations that manufacture or service alternatively certified parts under 14 CFR 21.303 (PMA) now perform a majority of aircraft maintenance. MARPA continues that service information distributed to owners and operators who are financing or leasing institutions may not reach this class, who may actually be responsible for accomplishing ADs. MARPA therefore requests that service documents deemed essential to accomplishing this proposed action be (1) incorporated by reference into the regulatory instrument, and (2) published in the DMS.

We understand MARPA's comment concerning IBR. 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 accomplishing the requirements mandated by this AD. Further, we point out that while documents that are incorporated by reference do become public information, 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 final rule is necessary in response to this comment.

Request for Policy Changes and Clarification

MARPA also expresses concern about several perceived inconsistencies in current FAA policy as regards parts manufacturing approval (PMA) parts. MARPA states: ''Type certificate holders in their service documents universally ignore the possible existence of PMA parts. This is especially true with foreign manufacturers where the concept may not exist or be implemented in the country of origin. In the instant case we are aware of a Rosemount Aerospace temperature controller that carries the part number (P/N) of 3801D2 approved for replacement of Embraer P/N: 145–38558–505 (Rosemount PMA supplement number 191, dated September 5, 2002). We do not have sufficient knowledge to determine whether the Rosemount part suffers from the same deficiencies as the Goodyear part. We are concerned that it may and because the proposed action restricts applicability to the Goodyear part the possibly defective Rosemount parts may continue in operation. We believe, at the very least, the Rosemount part should be addressed in the action to advise whether the regulatory action is intended to apply or not apply to this particular part.''

We do not agree. EMBRAER P/N 145–38558–505 is not a replaceable part; it is a drawing used by EMBRAER to install the Goodrich (Rosemount) controller, P/N 3801D2, during production. As the NPRM does not address deficiencies in the subject controller, but only the installation of the controller power cable mounting hardware, replacing the subject controller is not an issue of this AD.

MARPA continues: ''We have, in the past, issued several comments on proposed actions suggesting the incorporation of language designed to extend applicability to known or unknown alternatively approved (PMA) parts. The Small Airplane Directorate has adopted, in whole or in part, MARPA's suggestion and we would recommend and request that the Transport Airplane Directorate coordinate with the Small Airplane Directorate to promulgate a uniform policy on this issue pursuant to Section 1, paragraph (b)(10) of Executive Order 12866.''

The FAA recognizes the need for standardization on this issue and is currently in the process of reviewing it at the national level. However, the Transport Airplane Directorate considers that to delay this particular AD action for resolution of this matter 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.

No change has been made to the final rule in regard to these concerns.

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 with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD affects about 689 airplanes of U.S. registry. The required actions take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Required parts will be supplied from operator stock. Based on these figures, the estimated cost of the AD for U.S. operators is $55,120, or $80 per airplane.

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):

2007–04–09 Empresa Brasileira De Aeronautica S.A. (Embraer): Amendment 39–14941. FAA–2006–25892; Directorate Identifier 2006–NM–120–AD.

Effective Date

(a) This AD becomes effective March 23, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from reports of smoke on the flight deck caused by damage from poor electrical contact due to loosening of the attaching hardware of the power cables of certain windshield temperature controllers. We are issuing this AD to prevent overheating of the power cable terminals of the windshield temperature controllers, which could result in smoke on the flight deck.

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.

Inspection of Part Number (P/N) of Controller

(f) Within 5,000 flight hours after the effective date of this AD, inspect to determine the part number of the left- and right-hand windshield temperature controllers. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the subject controller can be conclusively determined from that review. If any windshield temperature controller is found to have a part number other than Goodrich P/N 3801D2( ), no further action is required by this AD for that controller.

Replacement of Attaching Hardware, Further Inspection, and Corrective Actions

(g) Before further flight after performing the inspection required by paragraph (f) of this AD, for all windshield temperature controllers having Goodrich P/N 3801D2( ) or any controller for which the part number cannot be conclusively determined: Replace the attaching hardware of the power cable terminals of the controllers with new, improved attaching hardware having new part numbers. Concurrently, perform a detailed inspection for signs of melting or damage of the plastic crimping ring, cable insulation, or terminals of the power cables, and, before further flight, perform applicable corrective actions. Perform all the actions in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–30–0043, Revision 02, dated May 25, 2006; or EMBRAER Service Bulletin 145LEG–30–0013, dated June 28, 2005; as applicable.

Credit for Actions Accomplished Using Previous Issue of Service Bulletin

(h) Actions accomplished before the effective date of this AD in accordance with EMBRAER Service Bulletin 145–30–0043, dated June 28, 2005; or Revision 01, dated April 7, 2006; are considered acceptable for compliance with the applicable corresponding actions required by this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 FR 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.

Related Information

(j) Brazilian airworthiness directive 2006–05–01, effective May 23, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use EMBRAER Service Bulletin 145–30–0043, Revision 02, dated May 25, 2006; or EMBRAER Service Bulletin 145LEG–30–0013, dated June 28, 2005; as applicable; 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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, S.W., 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 February 6, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–2510 Filed 2–15–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25470; Directorate Identifier 2006–NM–090–AD; Amendment 39–14942; AD 2007–04–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Boeing Model 747–400 series airplanes. That AD currently requires replacement of the decompression panels that are located in the smoke barrier between the passenger and main deck cargo compartment with new panels of an improved design. This new AD requires modification of the decompression panels on the smoke barrier in the main deck cargo compartment, or replacement of the smoke barrier with an improved smoke barrier, as applicable. This new AD also requires repetitive inspections of the decompression (vent) panels on the smoke barrier and corrective actions if necessary. This new AD also adds airplanes to the applicability. This AD results from reports of decompression panels on the smoke barrier opening in flight and on the ground without a decompression event. We are issuing this AD to prevent inadvertent opening or tearing of decompression panels, which could result in degraded cargo fire detection and suppression capability, smoke penetration into an occupied compartment, and an uncontrolled cargo fire, if a fire occurs in the main deck cargo compartment.