

priorities is the apprehension and removal of criminal aliens. The authority for Assistant Chief Patrol Agents to issue subpoenas will allow for greater flexibility in the processing of these aliens. The subpoena is issued in criminal or civil investigations to require the production of documentary evidence, for use in a Service-related case. Currently employees above and below the Assistant Chief level have the power to issue subpoenas. Implementation of the rule will add continuity to the Immigration and Naturalization Service and the Border Patrol chains of command. The Service's implementation of this rule as a final rule, without provision for public comment, is based upon the exception found in 5 U.S.C. 553(b)(B). This rule related to agency management and is administrative in nature. Thus, the comment period and noticed are deemed unnecessary and contrary to the public interest.

Executive Order 12612

The regulation adopted herein will not have substantial direct effects 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. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), had reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. The regulation is administrative in nature and the rule relates only to agency management.

List of Subjects in 8 CFR Part 287

Immigration, Law enforcement officers.

For the reasons set forth in the preamble, part 287 in chapter I of title

8 of the Code of Federal Regulations, is amended as set forth below.

PART 287—FIELD OFFICERS; POWERS AND DUTIES

1. The authority citation for Part 287 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357, 8 CFR part 2.

2. In Section 287.4 paragraphs (a)(1) and (c) are revised to read as follows:

§ 287.4 Subpoena.

(a) * * *

(1) *Criminal or civil investigations.* All District Directors, Deputy District Directors, Chief Patrol Agents, Deputy Chief Patrol Agents, Assistant Chief Patrol Agents, Officers-in-Charge, Patrol Agents in Charge, Assistant District Directors, Investigations, Supervisory Criminal Investigators (Anti-Smuggling), Regional Directors, Office of Professional Responsibility, Service Center Directors, and Assistant District Directors for Examinations, may issue a subpoena requiring the production of records and evidence for use in criminal or civil investigations.

* * * * *

(c) *Service.* A subpoena issued under this section may be served by any person, over 18 years of age not a party to the case, designated to make such service by the District Director, Deputy District Director, Chief Patrol Agent, Deputy Chief Patrol Agent, Assistant Chief Patrol Agent, Patrol Agent in Charge, Officer in Charge, Assistant District Director, Investigations, Supervisory Criminal Investigator (Anti-Smuggling), Regional Director, and Office of Professional Responsibility, having administrative jurisdiction over the office in which the subpoena is issued. Service of the subpoena shall be made by delivering a copy thereof to the person named therein and by tendering to him/her the fee for one day's attendance and the mileage allowed by law by the United States District Court for the district in which the testimony is to be taken. When the subpoena is issued on behalf of the Service, fee and mileage need not be tendered at the time of service. A record of such service shall be made and attached to the original copy of the subpoena.

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Dated: October 10, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95-27919 Filed 11-9-95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-NM-28-AD; Amendment 39-9430; AD 95-23-10]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737 series airplanes, that requires revising the FAA-approved Airplane Flight Manual (AFM) to provide the flightcrew with additional procedures for shutting down the auxiliary power unit (APU) when an APU fire is indicated. This amendment is prompted by reports indicating that a latent electrical failure exists in the fire extinguishing system for the APU; this failure could prevent the APU from shutting down and fire extinguishant from discharging into the APU compartment in the event of an APU fire. The actions specified by this AD are intended to ensure that the flightcrew is provided with procedures for shutting down the APU in the event of an APU fire.

EFFECTIVE DATE: December 13, 1995.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Bray, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2681; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 737 series airplanes was published in the Federal Register on June 2, 1995 (60 FR 28763). That action proposed to require revising the Emergency Procedures and Limitations Sections of the FAA-approved Airplane Flight Manual (AFM) to provide the flightcrew with these additional procedures for shutting down the APU when an APU fire is indicated.

Interested persons have been afforded an opportunity to participate in the

making of this amendment. Due consideration has been given to the comments received.

Three commenters support the proposed rule.

One commenter requests that the requirements of the proposed AD be made a reference procedure found both in the AFM and the Quick Reference Handbook, rather than "recall items" in the Limitations section of the AFM. The commenter does not provide justification for its request. The FAA concurs partially. The FAA finds that the operational procedure should be included in the Emergency Procedures Section of the AFM; however, the procedure should not be included in the Limitations Section. Further, the FAA finds that inclusion of the procedure in the Quick Reference Handbook, as suggested by the commenter, will not adequately address the recall requirement of this AD. The FAA has determined that any hesitation on the part of the flightcrew with regard to taking action to shut down the APU in the event of an APU fire could jeopardize safe flight and landing of the airplane. The FAA finds it critical that the flightcrew commit such procedures to memory; therefore, these procedures must be considered recall items. Paragraph (a) of the final rule has been revised to remove the requirement to include the operational procedure in the Limitations Section of the AFM.

One commenter agrees that the AFM should be revised to incorporate the additional procedures specified in the proposed rule. However, the commenter states that the unsafe condition addressed by the proposal does not warrant issuance of an AD. The commenter suggests that Boeing revise the AFM to incorporate the proposed additional procedures, which would negate the cost of AD compliance paperwork for both the FAA and operators while providing an equivalent level of safety. The commenter adds that incorporation of the additional procedures into operators' manuals (through Boeing issuing a revision to the master AFM) would be more expeditious than the FAA issuing an AD with a 6-month compliance period.

The FAA does not concur with the commenter's position that issuance of an AD is not warranted. As stated in the preamble of the proposed rule, the FAA received reports indicating that a latent electrical failure exists in the fire extinguishing system of the APU on the affected airplanes. This electrical failure presents an unsafe condition in airplanes, since it could eventually prevent the APU from shutting down and fire extinguishant from discharging

when the flight crew pulls and rotates the fire handle. Consequently, the flightcrew would be unable to extinguish an APU fire. The FAA has determined that this unsafe condition could exist or eventually develop on Model 737 series airplanes, and that revision of the AFM must be mandated to ensure that safety is not degraded. The appropriate vehicle for mandating such action to correct an unsafe condition is the airworthiness directive. However, the FAA has confirmed that Boeing intends to update the AFM for the affected airplanes in the next revision, which is scheduled for December 1995.

One commenter, Boeing, requests that the FAA reevaluate the cost-benefit analysis of the proposed rule. The commenter states that simply changing the AFM to add a recall item, as proposed in this AD, will not fully accomplish the intent of the rule; flightcrews must be retrained to commit the recall item to memory. The commenter states that the cost benefit analysis should account for such training (including flightcrew training time, instructors, and updated materials). The commenter points out that the FAA is required by Executive Order 12866 to do an analysis to show that benefits outweigh costs before imposing new regulations. The commenter adds that, in calculating the total cost impact of the proposed AD, the FAA is stating that industry will be incurring a cost in implementing this rule that it would otherwise not be liable for if the rule was not issued.

The FAA acknowledges the concerns of this commenter. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically does not include incidental costs. In the case of this AD, for example, the requirements are to revise the AFM to include certain information. How operators actually "implement" that information thereafter (once it is placed in the AFM) may vary greatly among them: for some operators, implementation may necessitate extensive retraining among their flightcrews; for others, implementation may merely be considered a typical part of the routine, continuous training of their flightcrews. In light of this, it would be nearly impossible for the FAA to calculate accurately or to reflect all costs associated with retraining flightcrews, as suggested by the

commenter. (The commenter does not provide an estimate of such costs.)

Further, because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain and operate aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining and operating safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD. In any case, the FAA has determined that direct and incidental costs are still outweighed by the safety benefits of the AD.

In addition, the FAA is not required to do a full cost-benefit analysis for each AD, since an AD typically does not meet the criteria of a "significant regulatory action" under Executive Order 12866. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost beneficial. When the FAA later makes a finding of an unsafe condition in an aircraft and issues an AD, it means that the original cost beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost beneficial, and because the AD does not add an additional regulatory requirement that increases the level of safety *beyond* what has been established by the type design, a full cost-benefit analysis for each AD would be redundant and unnecessary.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 2,602 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,072 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required

actions, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$64,320, or \$60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action—(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. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95-23-10 Boeing: Amendment 39-9430. Docket 95-NM-28-AD.

Applicability: All Model 737 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew is provided with additional procedures necessary for shutting down the auxiliary power unit (APU) in the event of an APU fire, accomplish the following:

(a) Within 6 months after the effective date of this AD, revise the Emergency Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures, which will ensure that the flightcrew is able to shut down the APU when an APU fire is indicated. This may be accomplished by inserting a copy of this AD in the AFM.

“APU FIRE WARNING

RECALL	
APU Fire Warning Switch.	PULL AND ROTATE
APU Switch	OFF
REFERENCE	
Master Fire Warning.	RESET”

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on December 13, 1995.

Issued in Renton, Washington, on November 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-27914 Filed 11-9-95; 8:45 am]

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14 CFR Part 39

[Docket No. 95-NM-217-AD; Amendment 39-9424; AD 95-23-04]

Airworthiness Directives; British Aerospace Model BAC 1-11 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all British Aerospace

Model BAC 1-11 400 series airplanes. This action requires an inspection of the rod ends of the lift dumper to detect drill holes; a dye penetrant inspection to detect any cracking of drilled holes; and replacement of the rod end with an undrilled rod end, if necessary. This amendment is prompted by a report that, during a routine examination of the operating mechanism of the lift dumper, two cracked aft rod ends were found. Investigation revealed that holes had been drilled in the rod ends for grease nipples during manufacturing, and that cracking had developed at the holes. The actions specified in this AD are intended to prevent asymmetric deployment and subsequent lateral control problems due to cracking of either pair of aft rod ends of the operating mechanism of the lift dumper. **DATES:** Effective November 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 28, 1995.

Comments for inclusion in the Rules Docket must be received on or before January 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-217-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from British Aerospace, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAC 1-11 400 series airplanes. The CAA advises that, during a routine examination of the operating mechanism of the lift dumper, cracking was found on two aft rod ends (one per wing) on a British Aerospace Model BAC 1-11 500 series airplane. Investigation revealed that, during manufacture, holes had been drilled in