

Issued in Renton, Washington, on January 21, 1999.

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Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-276-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require revising the Airworthiness Limitations Section of the maintenance manual [767 Airworthiness Limitations Instructions (ALI)]. The revision would incorporate into the ALI certain inspections and compliance times to detect fatigue cracking of principal structural elements (PSE). This proposal is prompted by analysis of data that identified specific initial inspection thresholds and repetitive inspection intervals for certain PSE's to be added to the ALI. The actions specified by the proposed AD are intended to ensure that fatigue cracking of various PSE's is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

DATES: Comments must be received by March 15, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 97-NM-276-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Patrick Safarian, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington; telephone (425) 227-2775; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97-NM-276-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 97-NM-276-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

In accordance with airworthiness standards requiring "damage-tolerance assessments" [reference current section 1529 of parts 23, 25, 27, and 29 of the Federal Aviation Regulations (FAR); section 4 of parts 33 and 35 of the FAR; section 82 of part 31 of the FAR; and the Appendices referenced in those sections], all products certificated to comply with those sections must have Instructions for Continued Airworthiness (or, for some products, maintenance manuals) that include an

Airworthiness Limitations Section. That section must set forth:

- Mandatory replacement times for structural components,
- Structural inspection intervals, and
- Related approved structural inspection procedures necessary to show compliance with the damage-tolerance requirements.

Compliance with the terms specified in the Airworthiness Limitations Section is required by FAR sections 43.16 (for persons maintaining products) and 91.403 (for operators).

As airplanes gain service experience, or as the result of post-certification testing and evaluation, it may become necessary to add additional life limits or structural inspections in order to ensure the continued structural integrity of the airplane. The manufacturer may revise the Airworthiness Limitations Section to include new or more restrictive life limits and inspections. However, in order to require compliance with those revised life limits and/or inspection intervals, the FAA must engage in rulemaking. Because loss of structural integrity would result in an unsafe condition, it is appropriate to impose these requirements through the airworthiness directive (AD) process.

Actions Taken by the Manufacturer

Boeing recently has completed extensive analyses and testing of fatigue cracking of principal structural elements (PSE) on certain Model 767 series airplanes, which included:

- Crack growth analysis,
- Service experience analysis,
- Crack growth testing,
- Fatigue testing, and
- Analysis of the effectiveness of applicable non-destructive inspection techniques to detect cracking and other anomalies.

The results of the testing and analyses demonstrated the need to incorporate certain inspections into the current Airworthiness Limitations Instructions (ALI).

New Revision of ALI

The FAA has reviewed and approved Boeing Document D622T001-9, Revision "JUNE 1997," titled "767 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations and Certification Maintenance Requirements (CMRs)." That document is the ALI of the maintenance manual to which this proposed AD refers. That document describes specific initial inspection thresholds and repetitive inspection intervals for certain PSE's [identified as structural significant items (SSI) in the ALI]. That document explicitly

identifies, for the first time, all of the PSE's that are to be inspected in accordance with the requirements of the ALI.

Although the Boeing document includes thresholds for all PSE's, in many cases the identified threshold is 50,000 total flight cycles for passenger airplanes. Because none of the affected airplanes is likely to reach this threshold for a number of years, Boeing has not yet developed the specific inspection procedures for these PSE's. However, these procedures will be developed well before any airplane reaches the threshold, and the FAA may consider further rulemaking when they become available.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require operators to revise the Boeing Model 767 ALI to incorporate Boeing Document D622T001-9, Revision "JUNE 1997." However, nothing in this proposed AD is intended to affect any of the requirements related to the life limits or certification maintenance requirements that are contained elsewhere in the ALI. This proposed AD is intended to address only those PSE inspections that are referred to in Chapter B. "Airworthiness Limitations-Structural Inspections" of Boeing Document D622T001-9, Revision "JUNE 1997."

In addition, Model 767-300F freighter airplanes are not affected by this rule because the revision of the ALI that was in effect at the time of the first delivery of a Model 767-300F freighter already addressed the need for inspections of PSE's.

Explanation of Action Taken by the FAA

As stated previously, in order to require compliance with these inspection intervals and life limits, the FAA must engage in rulemaking, namely, the issuance of an AD. For products certificated to comply with the referenced part 25 requirements, it is within the authority of the FAA to issue an AD requiring a revision to the Airworthiness Limitations Section that includes reduced life limits, or new or different structural inspection requirements. These revisions then are mandatory for operators under FAR section 91.403(c), which prohibits operation of an airplane for which airworthiness limitations have been issued unless the inspection intervals

specified in those limitations have been complied with.

Once that document is revised, as required, and the AD has been fully complied with, the life limit or structural inspection change remains enforceable as a part of the Airworthiness Limitations. (This is analogous to AD's that require changes to the limitations section of the Airplane Flight Manual.)

Requiring a revision of the Airworthiness Limitations, rather than requiring individual inspections, is advantageous for operators because it allows them to record AD compliance status only once—at the time they make the revision—rather than after every inspection. It also has the advantage of keeping all Airworthiness Limitations, whether imposed by original certification or by AD, in one place within the operator's maintenance program, thereby reducing the risk of non-compliance because of oversight or confusion.

Determination of Grace Period

This proposed AD allows operators up to three years after the effective date of this AD to accomplish the ALI revision required by this AD. This period provides operators of airplanes that are approaching or have already reached the 25,000-flight-cycle inspection threshold with a reasonable amount of time to plan and perform the inspections. The FAA notes that only a few PSE's in the ALI have an initial inspection threshold of 25,000 total flight cycles. The majority of PSE's in the ALI have an initial inspection threshold that corresponds to the design service objective of the affected airplane (i.e., 50,000 total flight cycles for passenger airplanes). In addition, the Model 767 Structures Working Group, whose membership is composed of many of the major operators worldwide and almost all U.S. operators, has been aware of the specific contents and requirements of this ALI revision since August 1996. These facts have led the FAA to determine that three years is an appropriate and reasonable grace period for operators to perform the earliest PSE inspections.

Cost Impact

There are approximately 660 Boeing Model 767 series airplanes (excluding Model 767-300F freighters) of the affected design in the worldwide fleet. The FAA estimates that 250 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per

work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$15,000, or \$60 per airplane.

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

Although this proposed AD requires only a revision to the current ALI, the FAA recognizes that the inspections contained in the ALI would then be required by parts 43 and 91 of the FAR. The FAA estimates that it would take approximately 1,000 work hours to accomplish all of the ALI inspections. At an average labor rate of \$60 per work hour, the cost to perform the ALI inspections (required by FAR parts 43 and 91, rather than by part 39) would be approximately \$60,000 per airplane. The FAA notes that the majority of work hours needed to perform the inspections would be expended when an affected airplane reached the 50,000 flight-cycle-threshold. Based upon current airplane utilization, the FAA estimates that no airplane would reach this threshold for at least 10 years.

Regulatory Impact

The regulations proposed herein would 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that 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) if promulgated, 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 copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting 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.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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), 40113, 44701.

§ 39.13 [Amended]

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

Boeing: Docket 97–NM–276–AD.

Applicability: Model 767–200 and –300 series airplanes having line numbers 1 through 669 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure continued structural integrity of these airplanes, accomplish the following:

(a) Within 3 years after the effective date of this AD, revise Section 9 of the Model 767 Maintenance Planning Data (MPD) Document entitled "Airworthiness Limitations and Certification Maintenance Requirements (CMR's)" to incorporate Chapter B. of Boeing Document D622T001–9, Revision "JUNE 1997."

Note 2: The referenced Chapter B contains a requirement that cracks found during the specified inspections be reported to the Seattle Aircraft Certification Office. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) and have been assigned OMB Control Number 2120–0056.

(b) Except as provided in paragraph (c) of this AD: After the actions required by paragraph (a) of this AD have been accomplished, no alternative inspections or inspection intervals shall be approved for the PSE's contained in Boeing Document D622T001–9, Revision "JUNE 1997."

(c) 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 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) 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.

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Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104924–98]

RIN 1545–AW06

Mark-to-Market Accounting for Dealers in Commodities and Traders in Securities or Commodities

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations for dealers in commodities and traders in securities or commodities regarding the election to use the mark-to-market method of accounting for their businesses. Section 1001(b) of the Taxpayer Relief Act of 1997 amended the applicable tax law for these taxpayers. This document also contains proposed regulations providing guidance on statutory changes to section 475 contained in the Internal Revenue Service Restructuring and Reform Act of 1998 (IRS Restructuring Act). This guidance is necessary because section 7003 of the IRS Restructuring Act generally prohibited the application of mark-to-market accounting to nonfinancial customer paper. Among other things, the proposed regulations provide guidance to taxpayers who are using mark-to-market accounting for nonfinancial customer paper. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of topics to be discussed at the public hearing scheduled for June 3, 1999, at 10 a.m. must be received by May 13, 1999.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–104924–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–104924–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at <http://www.irs.ustreas.gov/prod/tax—regs/comments.html>. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Concerning the regulations about elections by commodities dealers and securities and commodities traders, Jo Lynn Ricks, 202–622–3920; concerning the regulations about nonfinancial customer paper, Pamela Lew, 202–622–3950; concerning submissions and the hearing, Michael L. Slaughter, Jr., 202–622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC, 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments concerning the collection of information must be received by March 29, 1999.

The first collection of information in this proposed regulation is described in the Explanation of Provisions section of this document (rather than being included in the text of the proposed regulations). That description indicates that the elections under section 475(e)(1) and (f)(1) and (2) may be required to be made on a form to be