

Rules and Regulations

Federal Register

Vol. 65, No. 81

Wednesday, April 26, 2000

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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure with respect to attorney fee proceedings to permit reimbursement to a prevailing appellant's attorney at his customary billing rate if that rate is consistent with the prevailing community rate where the attorney ordinarily practices. The intent of the amendment is to provide a more equitable scheme for reimbursement of a prevailing appellant's attorney fees.

EFFECTIVE DATE: April 26, 2000.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653-7200.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board previously published a proposal to amend its rule at 5 CFR § 1201.203, which governs attorney fee proceedings, to permit reimbursement of a prevailing appellant's attorney fees at the attorney's customary billing rate if that rate is consistent with the prevailing community rate for similar services where the attorney ordinarily practices. (64 FR 72040, December 23, 1999) The Board requested comments on the proposal and suggestions as to alternatives that might carry out the Board's intent of establishing a more equitable scheme for reimbursement of a prevailing appellant's attorney fees. The due date for comments was February 7, 2000.

Comments were received from three practitioners, all with experience representing appellants before the

Board. Each of these practitioners supports the Board's proposal. No comments were received in opposition to the proposal.

One practitioner suggested that the Board also amend 5 CFR § 1201.203 to provide that "reasonable" attorney fees will be determined using the attorney's current, rather than historic, rates. The practitioner argued that such a rule would provide fairer compensation where a case takes years to resolve. The Board concludes that this suggestion is beyond the scope of the proposed rule and that any such change would more appropriately be developed through case law.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, unless otherwise noted.

2. Amend § 1201.203 by revising paragraph (a)(3) to read as follows:

§ 1201.203 Proceedings for attorney fees.

(a) * * *

(3) A statement of the attorney's customary billing rate for similar work, with evidence that that rate is consistent with the prevailing community rate for similar services in the community in which the attorney ordinarily practices; and

* * * * *

Dated: April 19, 2000.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 00-10232 Filed 4-25-00; 8:45 am]

BILLING CODE 7400-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-13-AD; Amendment 39-11693; AD 2000-08-07]

RIN 2120-AA64

Airworthiness Directives; Raytheon Model BAe 125-800A and BAe 125-800B, Model Hawker 800, and Model Hawker 800XP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Raytheon Model BAe 125-800A and BAe 125-800B, Model Hawker 800, and Model Hawker 800XP series airplanes, that currently requires the filling of two tooling holes on the firewalls of the left and right engine pylons with firewall sealant. This amendment requires the sealing of all unused (open) tooling holes on the firewalls of the left and right engine pylons, and expands the applicability to include additional airplanes. This amendment is prompted by reports of additional unused (open) tooling holes, found at locations other than those currently addressed. The actions specified by this AD are intended to prevent an engine fire from moving to the fuselage and to the lines that carry flammable fluid that are located inboard of the firewall.

DATES: Effective May 31, 2000.

The incorporation by reference of Raytheon Service Bulletin SB.54-1-3815B, Revision 1, dated May 1998, as listed in the regulations, is approved by the Director of the Federal Register of May 31, 2000.

The incorporation by reference of Raytheon Service Bulletin SB.54-1-3815B, dated March 26, 1996, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 27, 1997 (61 FR 66878, December 19, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas, 67201-0085. This information may be examined at the

Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Jeffrey A. Pretz, Aerospace Engineer, Systems and Propulsion Branch, ACE-116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4153; fax (316) 946-4407.

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96-24-16, amendment 39-9840 (61 FR 66878, December 19, 1996), which is applicable to certain Raytheon Model BAe 125-800A and BAe 125-800B, Model Hawker 800, and Model Hawker 800XP series airplanes, was published in the *Federal Register* on January 24, 2000 (65 FR 3619). The action proposed to continue to require the filling of two tooling holes on the firewalls of the left and right engine pylons with firewall sealant. The action also proposed to require the sealing of all unused (open) tooling holes on the firewalls of the left and right engine pylons, and would expand the applicability to include additional airplanes.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 340 Model BAe 125-800A and BAe 125-800B, Model Hawker 800, and Model Hawker 800XP series airplanes of the affected design in the worldwide fleet. The FAA estimates that 221 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 96-24-16, and retained in this AD, take approximately 2 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact

of the currently required actions on U.S. operators is estimated to be \$120 per airplane.

The new actions that are required in this AD action will take approximately 2 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be \$26,520, or \$120 per airplane.

The cost impact figures discussed above are 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.

Regulatory Impact

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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, Incorporation by reference, 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), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-9840 (61 FR 66878, December 19, 1996), and by adding a new airworthiness directive (AD), amendment 39-11693, to read as follows:

2000-08-07 Raytheon Aircraft Co.

(Formerly Beech): Amendment 39-11693. Docket 99-NM-13-AD.

Supersedes AD 96-24-16, Amendment 39-9840.

Applicability: Model BAe 125-800A and BAe 125-800B, Model Hawker 800, and Model Hawker 800XP series airplanes; as listed in Raytheon Service Bulletin SB.54-1-3815B, Revision 1, dated May 1998; 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 prevent an engine fire from moving to the fuselage and to the lines that carry flammable fluid that are located inboard of the firewall, accomplish the following:

Restatement of Requirements of AD 96-24-16

(a) For airplanes identified in AD 96-24-16, amendment 39-9840: Within 6 months after January 27, 1997 (the effective date of AD 96-24-16), fill the two, unused tooling holes in the firewalls of the left and right engine pylons, in accordance with Raytheon Service Bulletin SB.54-1-3815B, dated March 26, 1996, or Raytheon Service Bulletin SB.54-1-3815B, Revision 1, dated May 1998. After the effective date of this AD, only Revision 1 of this service bulletin shall be used.

New Requirements of This AD

(b) For all airplanes: Within 6 months after the effective date of this AD, fill all unused tooling holes in the left and right engine pylon firewalls with firewall sealant, in accordance with Raytheon Service Bulletin SB.54-1-3815B, Revision 1, dated May 1998.

Alternative Methods of Compliance

(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, Wichita Aircraft Certification Office (ACO), ACE-116W, FAA, Small 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, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(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.

Incorporation by Reference

(e) The actions shall be done in accordance with Raytheon Service Bulletin SB.54-1-3815B, dated March 26, 1996; or Raytheon Service Bulletin SB.54-1-3815B, Revision 1, dated May 1998.

(1) The incorporation by reference of Raytheon Service Bulletin SB.54-1-3815B, Revision 1, dated May 1998, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Raytheon Service Bulletin SB.54-1-3815B, dated March 26, 1996, was approved previously by the Director of the Federal Register as of January 27, 1997 (61 FR 66878, December 19, 1996).

(3) Copies may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas, 67201-0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 31, 2000.

Issued in Renton, Washington, on April 14, 2000.

Charles D. Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 00-9896 Filed 4-25-00; 8:45 am]
BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-346-AD; Amendment 39-11701; AD 2000-08-15]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing 777 series airplanes, that requires a one-time inspection to detect cracking of the fastener holes common to the upper wing skins and trailing edge panels of both wings, and corrective actions, if necessary. This amendment also requires coldwork of the fastener holes and installation of new or serviceable fasteners. This amendment is prompted by a report indicating that fatigue cracks have been found in the upper wing skin of both wings. The actions specified by this AD are intended to prevent fatigue cracking of the upper wing skin, which could result in reduced structural integrity of the wing.

DATES: Effective May 31, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 31, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 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: Stan Wood, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2772; fax (425) 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 certain Boeing 777 series airplanes was published in the **Federal Register** on January 4, 2000 (65 FR 250). That action proposed to require a one-time inspection to detect cracking of the fastener holes common to the upper wing skins and trailing edge panels of both wings, and corrective actions, if necessary. That action also proposed to require coldwork of the fastener holes and installation of new or serviceable fasteners.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response

to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 82 airplanes of the affected design in the worldwide fleet. The FAA estimates that 33 airplanes of U.S. registry will be affected by this AD, that it will take approximately 13 work hours per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$216 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$32,868, or \$996 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.

Regulatory Impact

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation