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NUCLEAR REGULATORY COMMISSION

10 CFR Part 70

RIN 3150-AE95

Clarification of Decommissioning Funding Requirements; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correcting amendments.

SUMMARY: This document corrects a misreference appearing in a final rule that was published in the Federal Register on July 26, 1995 (60 FR 38235). This action is to correct this typographical error for clarity and consistency in the regulations.

DATES: Effective May 11, 2001.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 [telephone (301) 415-6219, e-mail JMM2@nrc.gov].

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1995 (60 FR 38235), a final rule entitled "Clarification of Decommissioning Funding Requirements" was published in the Federal Register. The purpose of the final rule was to amend the regulations applicable to decommissioning funding assurance and the expiration and termination of licenses for nonreactor licensees. In that final rule, paragraph (e) of § 30.36, Expiration and termination of licensees and decommissioning of sites and separate buildings or outdoor areas," referenced § 30.35, Financial assurance and recordkeeping for decommissioning." Similarly, paragraph (e) to § 40.42, Expiration and termination of licenses and decommissioning of sites and

separate or outdoor areas, referenced § 40.36, Financial assurance and recordkeeping for decommissioning. However, paragraph (e) to § 70.38, Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas, erroneously referenced § 30.35 instead of § 70.25, Financial assurance and recordkeeping for decommissioning. This typographical error needs to be corrected.

Need for Corrections

As published, the final rule entitled "Clarification of Decommissioning Funding Requirements" (60 FR 38235; July 26, 1995) contains a typographical error in § 70.38(e) which needs to be corrected.

List of Subjects in 10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendment to 10 CFR part 70.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846); sec. 193, 104 Stat. 2835 as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243).

Sections 70.1 and 70.20a(b) also issued under secs. 134, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155). Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued

under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

2. In § 70.38, the introductory text of paragraph (e) is revised to read as follows

§ 70.38 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(e) Coincident with the notification required by paragraph (d) of this section, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to § 70.25 in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to paragraph (g)(4)(v) of this section.

* * * * *

Dated at Rockville, Maryland, this 7th day of May, 2001.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 01-11901 Filed 5-10-01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-123-AD; Amendment 39-12226; AD 2001-10-01]

RIN 2120-AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-135 and EMB-145 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 certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-135 and EMB-145 series airplanes. This action requires revising the FAA-approved Airplane Flight

Manual to prohibit in-flight auxiliary power unit (APU) starts, and installing a placard on or near the APU start/stop switch panel to provide such instructions to the flight crew. This action is necessary to prevent flame backflow into the APU compartment through the eductor during in-flight APU starts, which could result in fire in the APU compartment. This action is intended to address the identified unsafe condition.

DATES: Effective May 29, 2001.

Comments for inclusion in the Rules Docket must be received on or before June 11, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-123-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. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via the Internet must contain "Docket No. 2001-NM-123-AD" in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT:

Linda M. Haynes, Aerospace Engineer, Airframe and Propulsion Branch, ACE-117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337-2748; telephone (770) 703-6091; fax (770) 703-6097.

SUPPLEMENTARY INFORMATION: The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB-135 and EMB-145 series airplanes. The DAC advises that it has received a report of occurrences of auxiliary power unit (APU) flame backflow into the APU compartment through the exhaust eductor, during in-flight APU starts.

The airplane manufacturer (EMBRAER) has reported to the DAC

and FAA that two APU fire alarms were triggered during in-flight APU starts at 30,000 feet on two airplanes. As a result, the fire sensors were replaced, but the same event occurred again in one of the airplanes. EMBRAER then inspected all APU's on the production fleet at its manufacturing facility, and found evidence of flame backflow (flames ingested back into the APU compartment) and minor damage (singed harness ties and discoloration) on four airplanes.

EMBRAER and Hamilton Sunstrand Power Systems (the APU manufacturer) further investigated the APU flame backflow events to determine the cause. Based on theoretical analysis and field data, the two manufacturers reached the following conclusions:

- The root cause is due to flames (that were generated during in-flight APU starts) being ingested into the APU compartment through the eductor.

- The event is only possible during in-flight APU start attempts at high altitudes where the fuel mixture tends to be rich. In that case, torching flames can occur when excessive fuel exits the combustor and is burned in the exhaust as the new air mixes with the hot gases.

- For APU ground starts only, none of the EMBRAER production airplanes showed burn marks. When the APU was used on approach for landing at lower altitudes (5,000 to 10,000 feet), field inspections of all affected airplanes (five airplanes with the APU model specified in the applicability of this AD) showed no burn marks.

- The probability of having a flame backflow event increases during high speeds. The APU manufacturer has found that if a large amount of pressure is present on the exhaust, the compressor may not have enough efficiency to overcome this pressure during the first stages of an in-flight APU start. In this case, the flame backflow would be diverted into the tailcone.

Even though there have been no occurrences of this flame backflow event at low altitudes, the DAC and FAA have determined that it is still possible for the flame backflow to occur. For that reason, both the DAC and FAA consider that any in-flight starts of the APU could adversely affect the safety of flight.

Explanation of Relevant Foreign Airworthiness Information

The DAC issued Brazilian emergency airworthiness directive 2001-04-02, dated April 12, 2001, in order to assure the continued airworthiness of these airplanes in Brazil. The Brazilian airworthiness directive references procedures for installing the APU

placard in EMBRAER Alert Service Bulletin 145-49-A017, dated April 12, 2001.

FAA's Conclusions

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent flame backflow into the APU compartment through the eductor during in-flight APU starts, which could result in fire in the APU compartment. This AD requires revising the FAA-approved Airplane Flight Manual to prohibit in-flight APU starts, and installing a placard on or near the APU start/stop switch panel to provide such instructions to the flight crew.

Differences Between the Brazilian Airworthiness Directive and This AD

Operators should note that the service bulletin referenced in the Brazilian airworthiness directive specifies installing the decal (placard) in the "pedestal panel" of the airplane, and the Brazilian airworthiness directive specifies such installation in the "main instrument panel." However, paragraph (b) of this AD specifies installing the placard "on or near the APU start/stop switch panel."

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this 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 under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-123-AD." The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, 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), 40113, 44701.

§ 39.13 [Amended]

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

2001-10-01 Empresa Brasileira de Aeronautica S.A. (EMBRAER):
Amendment 39-12226. Docket 2001-NM-123-AD.

Applicability: Model EMB-135 and EMB-145 series airplanes, certificated in any category, equipped with Hamilton Sundstrand Power Systems auxiliary power unit (APU) model T-62T-40C14 (APS 500R).

Compliance: Required as indicated, unless accomplished previously.

To prevent flame backflow into the APU compartment through the eductor during in-flight APU starts, which could result in fire in the APU compartment, accomplish the following:

Airplane Flight Manual (AFM) Revision

(a) Within 25 flight hours or 10 days after the effective date of this AD, whichever occurs first, accomplish the actions required by paragraphs (a)(1) and (a)(2) of this AD.

(1) Install a placard on or near the APU start/stop switch panel that reads:

"Caution: In-Flight APU Starts are Prohibited"

(2) Revise the Limitations Section of the FAA-approved AFM to include the information on the placard, as specified in paragraph (a)(1) of this AD, and to limit APU starts to ground conditions only. This may be accomplished by inserting a copy of this AD in the AFM.

Note 1: Because APU starts are prohibited in flight when an engine-driven generator is inoperative, the APU must be started on the ground in order to dispatch, and the APU must be kept operational for the entire flight.

Alternative Methods of Compliance

(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, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 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.

Note 3: The subject of this AD is addressed in Brazilian emergency airworthiness directive 2001-04-02, dated April 12, 2001.

Effective Date

(d) This amendment becomes effective on May 29, 2001.

Issued in Renton, Washington, on May 7, 2001.

Donald L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-11899 Filed 5-10-01; 8:45 am]

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