

applicable to certain Boeing Model 737-100, -200, -300, -400, and -500 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on March 5, 1999 (64 FR 10578). The proposed rule would have required modification of certain filter module assemblies of the generator control units (GCU). That action was prompted by reports of smoke and occasional fire in the flight compartment as a direct result of a GCU failure. The proposed actions were intended to prevent failure of the filter module assemblies of the GCUs due to overcurrent conditions, which could result in an increased risk of smoke, and/or fire in the flight compartment.

#### Actions Since Issuance of the NPRM

The NPRM proposed to require modification of certain filter module assemblies of the GCUs to prevent smoke and/or fire in the flight compartment due to overcurrent conditions in the GCUs. Since the issuance of the NPRM, the manufacturer has advised the FAA that there have been no reports of fire as a result of GCU overcurrent conditions. The manufacturer has further advised that GCUs that were examined and/or repaired by the supplier have shown no evidence of fire. In those cases where fires were reported, the manufacturer asserts that the erroneous identification of an actual fire had been inferred from the presence of smoke, which resulted from unrelated conditions and did not represent a hazard to the airplane.

In addition, the modifications proposed by the NPRM may have contributed, in part, to an event that occurred on a Model 737-200 series airplane during which all electrical power was lost in flight. As a result of that incident, the FAA issued AD 99-18-17, amendment 39-11283 (64 FR 47656, September 1, 1999), which was later superseded by AD 99-24-08, amendment 39-11432 (64 FR 66368, November 26, 1999), to require, among other things, repetitive testing of GCU diodes and repetitive replacement of airplane batteries. In this case, the attempt to minimize the incidence of smoke resulted in an increased probability of a total loss of electrical power. Total loss of electrical power represents a greater hazard to the airplane, and the information provided by the manufacturer indicates that the existing GCUs are adequate to ensure the safety of the fleet.

#### FAA's Conclusions

Upon further consideration of the above information, the FAA has determined that the hazard associated

with GCU overcurrent conditions does not justify a requirement to modify the filter module. The FAA has further determined that incorporation of the proposed modifications could actually decrease the reliability of the electrical power system. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

#### Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 98-NM-353-AD, published in the **Federal Register** on March 5, 1999 (64 FR 10578), is withdrawn.

Issued in Renton, Washington, on August 20, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate,  
Aircraft Certification Service.

[FR Doc. 01-21496 Filed 8-23-01; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2001-NM-99-AD]

RIN 2120-AA64

#### **Airworthiness Directives; McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F (KC-10A and KDC-10), -40, and -40F Series Airplanes; and Model MD-10-10F and -30F 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 McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F (KC-10A

and KDC-10), -40, and -40F series airplanes; and Model MD-10-10F and -30F series airplanes. This proposal would require an inspection of the throttle control module on the center pedestal in the flight deck compartment to determine its part number and configuration, and modification of the throttle control module. This action is necessary to prevent chafing of wiring inside the throttle control module, fuel shutoff lever lights, and/or aft pedestal lightplates due to degradation of protective sleeving, which could result in electrical arcing and failure of the auto throttle/speed control system and consequent smoke and/or fire in the cockpit. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by October 9, 2001.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-99-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-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001-NM-99-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5343; fax (562) 627-5210.

**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 action may be changed in light of the comments received.

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 proposed 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 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 action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-99-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. 2001-NM-99-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

## Background

In July 1996, a Boeing Model 747 series airplane was involved in an accident. As part of re-examining all aspects of the service experience of the airplane involved in the accident, the FAA participated in design review and testing to determine possible sources of ignition in center fuel tanks. As part of the review, we examined fuel system wiring with regard to the possible

effects that wire degradation may have on arc propagation.

In 1997 in a parallel proceeding, at the recommendation of the White House Commission on Aviation Safety and Security, the FAA expanded its Aging Transport Program to include non-structural systems and assembled a team for evaluating these systems. This team performed visual inspections of certain transport category airplanes for which 20 years or more had passed since date of manufacture. In addition, the team gathered information from interviews with FAA Principal Maintenance Inspectors and meetings with representatives of airplane manufacturers. This evaluation revealed that the length of time in service is not the only cause of wire degradation; inadequate maintenance, contamination, improper repair, and mechanical damage are all contributing factors. From the compilation of this comprehensive information, we developed the Aging Transport Non-Structural Systems Plan to increase airplane safety by increasing knowledge of how non-structural systems degrade and how causes of degradation can be reduced.

In 1998, an accident occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD-11 series airplane. Investigation indicates that a fire broke out in the cockpit and first class overhead area. Although the ignition source of the fire has not been determined, the FAA, in conjunction with Boeing and operators of Model MD-11, DC-8, DC-9, DC-10, and DC-9-80 series airplanes, is reviewing all aspects of the service history of those airplanes to identify potential unsafe conditions associated with wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage) and to take appropriate corrective actions. We have issued a series of airworthiness directives (AD) that address unsafe conditions identified during that process. This process is continuing and we may consider additional rulemaking actions as further results of the review become available. The cause of the Nova Scotia MD-11 accident has not yet been determined.

In 1999, the FAA Administrator established a formal advisory committee to facilitate the implementation of the Aging Transport Non-Structural Systems Plan. This committee, the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), is made up of representatives of airplane manufacturers, operators, user groups, aerospace and industry associations,

and government agencies. As part of its mandate, ATSRAC will recommend rulemaking to increase transport category airplane safety in cases where solutions to safety problems connected to aging systems have been found and must be applied. Detailed analyses of certain transport category airplanes that have been removed from service, studies of service bulletins pertaining to certain wiring systems, and reviews of previously issued ADs requiring repetitive inspections of certain wiring systems, have resulted in valuable information on the cause and prevention of wire degradation due to various contributing factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In summary, as a result of the investigations described above, the FAA has determined that corrective action may be necessary to minimize the potential hazards associated with wire degradation and related causal factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

## Identification of Unsafe Condition

The FAA has received reports of chafed electrical wires inside the throttle control module on certain McDonnell Douglas Model DC-10 series airplanes, which resulted in the failure of the auto throttle disconnect and takeoff/go around (TOGA) mode of the auto throttle/speed control system (AT/SC). Associated with the AT/SC wiring is the wiring of the fuel shutoff lever lights and aft pedestal lightplates, which also showed evidence of chafing. The cause of such chafing has been attributed to degradation of the existing protective sleeving on the wires during normal throttle actuation. Chafing of wiring inside the throttle control module, fuel shutoff lever lights, and/or aft pedestal lightplates, if not corrected, could result in electrical arcing and failure of the AT/SC and consequent smoke and/or fire in the cockpit.

The throttle control module on the center pedestal in the flight deck compartment on certain Model MD-10-10F and -30F series airplanes are identical to those on the affected Model DC-10 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

## Other Related Rulemaking

This proposed AD is one of a series of actions identified as part of the ATSRAC program initiative to maintain continued operational safety of aging non-structural systems in transport category airplanes. The program is

continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

#### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin DC10-76A048, dated August 6, 2001, which describes procedures for an inspection of the throttle control module on the center pedestal in the flight deck compartment to determine its part number and configuration and modification of the throttle control module. The modification includes removing material from the throttle lever and cover plates (as applicable) for engines 1, 2, and 3; replacing the existing guide assembly with an improved guide assembly inside the throttle control module; replacing the existing protective sleeving on the wire bundles; and removing previously installed spiral wrap tubing on the auto throttle/TOGA wiring; and reidentifying the coverplates and throttle control module; as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

#### 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 accomplishment of the actions specified in the service bulletin described previously.

#### Cost Impact

There are approximately 399 Model DC-10-10, -10F, -15, -30, -30F (KC-10A and KDC-10), -40, and -40F series airplanes, and Model MD-10-10F and -30F series airplanes of the affected design in the worldwide fleet. The FAA estimates that 321 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately between 5 and 7 work hours per airplane depending on the airplane configuration to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$1,712 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between \$2,012 and \$2,132, per airplane, depending on the airplane configuration.

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 proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

#### Regulatory Impact

The regulations proposed herein would 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 proposal would not have federalism implications under Executive Order 13132.

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:

**McDonnell Douglas:** Docket 2001-NM-99-AD.

**Applicability:** Model DC-10-10, -10F, -15, -30, -30F (KC-10A and KDC-10), -40 and

-40F series airplanes; and Model MD-10-10F and -30F series airplanes; as listed in Boeing Alert Service Bulletin DC10-76A048, dated August 6, 2001; 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 (b) 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 chafing of wiring inside the throttle control module, fuel shutoff lever lights, and/or aft pedestal lightplates due to degradation of protective sleeving, which could result in electrical arcing and failure of the auto throttle/speed control system and consequent smoke and/or fire in the cockpit, accomplish the following:

#### Inspection and Modification

(a) Within 18 months after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD, per Boeing Alert Service Bulletin DC10-76A048, dated August 6, 2001.

(1) Do an inspection of the throttle control module on the center pedestal in the flight deck compartment to determine its part number and configuration. This will identify the group applicability information.

(2) Modify the throttle control module on the center pedestal in the flight deck compartment per the applicable Figure in the service bulletin.

#### 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, Los Angeles 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, Los Angeles ACO.

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

#### Special Flight Permit

(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.

Issued in Renton, Washington, on August 17, 2001.

**Vi L. Lipski,**

*Manager, Transport Airplane Directorate,  
Aircraft Certification Service.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-106431-01]

RIN 1545-AY76

#### Qualified Subchapter S Trust Election for Testamentary Trusts

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to a qualified subchapter S trust election for testamentary trusts under section 1361 of the Internal Revenue Code. The Small Business Job Protection Act of 1996 and the Taxpayer Relief Act of 1997 made changes to the applicable law. These proposed regulations affect S corporations and their shareholders.

**DATES:** Written or electronic comments and requests for a public hearing must be received by November 23, 2001.

**ADDRESSES:** Send submissions to: CC:IT&A:RU (REG-106431-01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:IT&A:RU (REG-106431-01), 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.gov/tax\\_regs/reglist.html](http://www.irs.gov/tax_regs/reglist.html).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Deane M. Burke, (202) 622-3070; concerning submissions of comments, Sonya Cruse, (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document proposes to amend section 1361 of the Income Tax Regulations (26 CFR part 1) regarding a

qualified subchapter S trust (QSST) election for testamentary trusts.

Section 1361(a) defines an S corporation as a small business corporation for which an election under section 1362(a) is in effect for the year. Section 1361(b) provides, in part, that a small business corporation is a domestic corporation which is not an ineligible corporation and which does not have as a shareholder a person (other than a trust described in section 1361(c)(2)) who is not an individual. Under section 1361(c)(2), subpart E trusts and testamentary trusts are permitted S corporation shareholders. A qualified subpart E trust is a trust, all of which is treated (under subpart E of part I of subchapter J, chapter 1) as owned by an individual who is a citizen or resident of the United States. A qualified subpart E trust that continues in existence after the death of the deemed owner (former qualified subpart E trust) is a permitted shareholder, but only for the 2-year period beginning on the day of the deemed owner's death. A testamentary trust is a trust to which S corporation stock is transferred pursuant to the terms of a will, but only for the 2-year period beginning on the day the stock is transferred to it.

Section 1303 of the Small Business Job Protection Act of 1996, Public Law 104-188 (110 Stat. 1779) (August 20, 1996) (1996 Act) amended section 1361 for taxable years beginning after December 31, 1996. Prior to the 1996 Act, a former qualified subpart E trust was a permitted shareholder for a 60-day period beginning on the day of the deemed owner's death. However, if the entire corpus of the trust was includible in the gross estate of the deemed owner, the trust was a permitted shareholder for a 2-year period beginning on the day of the deemed owner's death. Under the regulations, special rules applied if the trust consisted of community property. A testamentary trust was a permitted shareholder of an S corporation for a 60-day period beginning on the day that the S corporation stock was transferred to the trust.

After the 1996 Act, both a testamentary trust and a former qualified subpart E trust, whether or not the entire corpus is included in the deemed owner's gross estate, are permitted shareholders for a 2-year period. Because the entire corpus of a former qualified subpart E trust is not required to be included in the deemed owner's estate, it is no longer relevant whether the trust consists of community property for purposes of the trust's qualifying as a permitted shareholder for a 2-year period. However, whether a former qualified subpart E trust consists

of community property is still relevant for purposes of determining the shareholders of S corporation stock held by the trust.

#### Explanation of Provisions

##### A. Incorporation of Changes From the 1996 Act

The proposed regulations incorporate changes from the 1996 Act regarding section 1361 to provide that a testamentary trust may be a permitted shareholder for a 2-year period. The proposed regulations also provide that a former qualified subpart E trust is a permitted shareholder for a 2-year period whether or not the entire corpus is included in the deemed owner's gross estate. The proposed regulations thus eliminate the special rules for determining whether trusts consisting of community property qualify for the 2-year period.

The proposed regulations also incorporate additional changes made to section 1361 by the 1996 Act. Section 1302 of the 1996 Act added a new type of trust, the electing small business trusts (ESBTs), to the types of trusts permitted to be S corporation shareholders under section 1361(c)(2). Section 1601(c) of the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 1086) (August 5, 1997) made technical amendments to section 1361 affecting ESBTs and S corporation shareholders. A notice of proposed rulemaking (REG-251701-96, 2001-4 I.R.B. 396) regarding ESBTs was published in the **Federal Register** (65 FR 82963) on December 29, 2000. The proposed regulations refer to ESBTs and provide that certain former qualified subpart E trusts and testamentary trusts can continue as permitted shareholders after the end of the 2-year period by becoming ESBTs.

Section 1316 of the 1996 Act allowed certain exempt organizations to be S corporation shareholders for taxable years beginning after December 31, 1997, and section 1301 increased the number of permissible S corporation shareholders from 35 to 75. The proposed amendments incorporate these additional changes.

##### B. QSST Election for Testamentary Trusts

Section 1.1361-1(j)(6)(iii)(C) of the Income Tax Regulations provides guidance regarding when a QSST election is made for a former qualified subpart E trust that also satisfies the requirements of a QSST. Under the provision, a QSST election may be made for a former qualified subpart E trust at any time, but no later than the end of