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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-20351; Directorate Identifier 2003-NM-269-AD; Amendment 39-14948; AD 2007-04-16]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 767 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 767 airplanes. This AD requires an inspection of each main tank fuel boost pump for the presence of a pump shaft flame arrestor, and if the flame arrestor is missing, replacement of that pump with a pump having a pump shaft flame arrestor. This AD also requires repetitive measurements of the flame arrestor's position in the pump, and corrective actions if necessary. This AD also requires the replacement of the pump with a new or modified pump, which ends the repetitive measurements. This AD results from reports that certain fuel boost pumps may not have flame arrestors installed in the pump shaft and reports that the pin that holds the flame arrestor in place can break due to metal fatigue. We are issuing this AD to prevent the possible migration of a flame from a main tank fuel boost pump inlet to the vapor space of that fuel tank, and consequent ignition of fuel vapors, which could result in a fire or explosion.

DATES: This AD becomes effective March 23, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 23, 2007.

ADDRESSES: You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Judith Coyle, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6497; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the street address stated in the ADDRESSES section.

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Boeing Model 767 airplanes. That supplemental NPRM was published in the Federal Register on July 6, 2006 (71 FR 38304). That supplemental NPRM proposed to require an inspection of each main tank fuel boost pump for the presence of a pump shaft flame arrestor, and if the flame arrestor is missing, replacement of that pump with a pump having a pump shaft flame arrestor. That supplemental NPRM also proposed to require repetitive measurements of the flame arrestor's position in the pump, and corrective actions if necessary. That supplemental NPRM also proposed to require the replacement of the pump with a new or modified pump, which ends the repetitive measurements.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request for Clarification of Replacement Requirement

The Air Transport Association (ATA) of America, on behalf of one of its member operators, Delta Air Lines, requests that we explain why we propose to require replacing the pump shaft without including the option of replacing the shaft pin or periodically inspecting the pin. Delta states that replacing the entire shaft would be at a considerable cost and that a more cost-effective solution would be to develop a pin replacement repair.

We acknowledge that it may be possible to develop a more cost-effective solution than the replacement specified in this AD. However, the manufacturer has developed only a single design solution (replacement of the pump shaft) to fully address the identified unsafe condition specified in this AD. We have mandated this terminating action because we can better ensure long-term continued operational safety by design changes to remove the source of the problem, rather than by repetitive inspections. We also recognize that alternative methods of compliance (AMOCs) that meet the intent of this AD may also exist; operators may request an AMOC in accordance with the procedures specified in paragraph (l) of this AD. We have not revised this AD in this regard.

Request To Remove Terminating Action Requirement

Delta Air Lines requests that we do not mandate the terminating action specified in paragraph (i) of the supplemental NPRM that would require replacing the pump within 36 months. Delta Air Lines states that if the 6,000-flight-hour or 24-month repetitive interval specified in paragraphs (f) and (g) of the supplemental NPRM provide an acceptable level of safety, then the repetitive interval should be adequate until an operator can schedule the terminating action specified in paragraph (i) of the supplemental NPRM, if desired.

We do not agree to remove the requirement to do the terminating action specified in paragraph (i) of this AD. We can better ensure long-term continued operational safety by modifications or design changes to remove the source of the problem, rather than by repetitive inspections/testing. Long-term inspections/testing may not provide the degree of safety necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led us to consider placing less emphasis on special procedures and more emphasis on design improvements.

We developed the 36-month compliance time for the replacement in accordance with manufacturer recommendations and we considered the urgency associated with the subject unsafe condition, the availability of required parts, and the practical aspect of accomplishing the required modification within a period of time that corresponds to the normal scheduled maintenance for most affected operators. However, according to the procedures specified in paragraph (l) of this AD, we may approve requests to adjust the compliance time if the request includes data that substantiate that the new compliance time would provide an acceptable level of safety. We have not revised this AD in this regard.

Request To Coordinate With Pending Related Actions

ATA, on behalf of one its member operators, Delta Air Lines, requests that the supplemental NPRM be coordinated with any action that may be pending to address the fuel pump feed-through connector in order to avoid more pump removals than are required to accomplish both actions. Delta Air Lines believes that Boeing Alert Service Bulletins 767-28A0095 and 767-28A0096, both dated September 15, 2005, which address the fuel pump feed-through connector, could be done concurrently with this supplemental NPRM.

We acknowledge that coordinating the actions in this AD with the actions specified in Boeing Alert Service Bulletins 767-28A0095 and 767-28A0096 may reduce the number of pump removals. However, we have not yet issued any AD rulemaking related to those service bulletins, and to delay this action would be inappropriate, since we have determined that an unsafe condition exists and the requirements of this AD must be done to ensure continued operational safety. We are considering AD rulemaking related to Boeing Alert Service Bulletins 767-28A0095 and 767-28A0096, and we are also considering how the compliance times specified in this AD will fit with the compliance times of that future rulemaking. Operators should note that it is always permitted to accomplish the requirements of any AD at a time earlier than the specified compliance time. We have not revised this AD in this regard.

Request To Add Phrase to Unsafe Condition Statement

Boeing requests that the phrase “should the pump inlets become uncovered” be added to paragraph (d) of the supplemental NPRM. The commenter notes that the phrase was removed by the FAA in the supplemental NPRM because the FAA stated that “the pump inlet does not need to be uncovered for ignited vapors in the pump to cause a tank explosion.” The commenter contends that the fuel pump inlets being covered in fuel mitigates the unsafe condition because when the fuel pump inlets are covered, the inlets and pump cavity are full of liquid fuel in which no flame front could develop.

We acknowledge the need for clarification of the unsafe condition statement. We acknowledge that operation of a fuel pump with its inlet below the surface of the fuel in the tank ensures that the ignition risk addressed by this AD is eliminated for the majority of the time the pump operates. However, ground fuel transfer conditions can lead to dry operation of the fuel pump. After the pump inlet is again covered by fuel by the addition of fuel to the tank, the pump operates for a brief period of time until it is re-primed. During this period of operation with the inlet covered by fuel, there is still some risk of a tank ignition event if an ignition source generating failure occurs within a pump with a missing flame arrestor. Therefore, we have not revised this AD in this regard.

Request To Incorporate Service Information

The Modification and Replacement of Parts Association (MARPA) states that typically ADs are based on service information originating with the type certificate holder or its suppliers. MARPA also states that manufacturer's service documents are privately authored instruments generally enjoying copyright protection against duplication and distribution. MARPA contends that when a service document is incorporated by reference pursuant to 5 U.S.C. 552(a) and 1 CFR part 51 into a public document such as an AD, it loses its private, protected status and becomes itself a public document. MARPA explains that if a service document is used as a mandatory element of compliance it should not simply be referenced, but should be incorporated into the regulatory document. MARPA states that public laws by definition must be public which means they cannot rely for compliance upon private writings. MARPA is concerned that failure to incorporate essential service information could result in a court decision invalidating the AD.

MARPA also states that incorporation by reference service documents should be made available to the public by publication in the Docket Management System (DMS) keyed to the action that incorporates them. MARPA explains that the stated purpose of the incorporation by reference method of the Federal Register is brevity; to keep from expanding the Federal Register needlessly by publishing documents already in the hands of the affected individuals. MARPA notes that traditionally, "affected individuals" has meant aircraft owners and operators who are generally provided service information by the manufacturer. However, MARPA states that a new class of affected individuals has emerged since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA states that this new class includes maintenance and repair organizations (MRO), component servicing and repair shops, parts purveyors and distributors and organizations manufacturing or servicing alternatively certified parts under section 21.303 ("Replacement and modification parts") of the Federal Aviation Regulations (14 CFR 21.303). Further, MARPA states that the concept of brevity is now nearly archaic as documents exist more frequently in electronic format than on paper.

We acknowledge that the Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the documents necessary for the accomplishment of the requirements mandated by this AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

In regard to the commenter's request to post service bulletins on the Department of Transportation's DMS, we are currently in the process of reviewing issues surrounding the posting of service bulletins on the DMS as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. No change to the AD is necessary in response to this comment.

Request To Comply With FAA Order 8040.2

The same commenter requests that the supplemental NPRM comply with FAA Order 8040.2. The commenter states that for mandatory continuing airworthiness information (MCAI) (issued by an aviation authority of another country) that require replacement or installation of certain parts, the Order allows for replacement of parts approved under section 21.303 ("Replacement and modification parts") of the Federal Aviation Regulations (14 CFR 21.303) based on a finding of identity in the FAA's AD. The commenter notes that the supplemental NPRM is not from an MCAI but believes that the principles of the order should be universal.

We do not agree. The supplemental NPRM did not address parts manufacturer approval (PMA) parts, as provided in draft FAA Order 8040.2, because the Order was only a draft that was out for comment at the time. After issuance of the NPRM, the Order was revised and issued as FAA Order 8040.5 with an effective date of September 29, 2006. FAA Order 8040.5 does not address PMA parts in ADs and does not apply to domestic ADs. Therefore, we have not revised the AD in this regard.

Request To Address the Use of PMA Parts

The same commenter also requests that we revise the way we address the use of PMA parts in the supplemental NPRM.

- The commenter requests that the language in the supplemental NPRM be changed to permit installation of PMA equivalent parts. The commenter states that the mandated installation of a certain part number in the NPRM “is at variance with the higher authority of 14 CFR Section 21.303.” The commenter notes that only safety issues can be addressed in airworthiness directives as set forth in Title 49 and “the prima facie invalidation of FAR 21.303” by AD action is an economic issue not within purview of the AD.
- The commenter contends that it is illogical to require an operator to request approval of an AMOC in order to install an “equivalent” PMA part.
- The commenter also requests that the supplemental NPRM be revised to cover possible defective PMA alternative parts so that those defective PMA parts also are subject to the supplemental NPRM.
- The commenter also points out that ADs issued by directorates other than the Transport Airplane Directorate contain wording that address PMA parts and requests that we use the wording specified in an AD from the Small Airplane Directorate. The commenter notes that because the supplemental NPRM differs markedly in the treatment of this issue, the mandates contained in Section 1, paragraph (b)(10) of Executive Order 12866 are not being met.

We recognize the need for standardization on this issue and currently are in the process of reviewing such issues that address the use of PMAs in ADs at the national level. The Transport Airplane Directorate considers that to delay this particular AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, we have not revised the AD in this regard.

Clarification of Compliance Time

Paragraph (f)(2) of the supplemental NPRM specifies a compliance time of “within 365 days after the date on which the airplane accumulates 15,000 total flight hours.” We have revised the compliance time specified in paragraph (f)(2) of this AD to “within 365 days after the date on which the airplane accumulates 15,000 total flight hours or within 24 months after performing the initial inspection required by paragraph (f) of this AD, whichever occurs later.” We made this change in order to give airplanes identified in paragraph (f)(2) that reach 15,000 total flight hours shortly after performing the initial inspection required by paragraph (f) a similar compliance time of 24 months after performing the initial inspection that is specified for airplanes in paragraphs (f)(1) and (g) of this AD. We considered the safety issues and the recommendations of the manufacturer and have determined that a 24-month interval after performing the initial inspection will ensure an acceptable level of safety.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously.

We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD affects about 915 airplanes worldwide, and 400 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

Estimated Costs

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Fleet cost
Inspection of flame arrestor presence/ position	5	\$80	None	\$400, per inspection cycle	\$160,000, per inspection cycle
Replacement	3	\$80	\$25,004	\$25,244	¹ \$10,097,600

¹The parts manufacturer states that it may cover the cost of replacement parts associated with this AD for certain affected airplanes, subject to warranty conditions. As a result, the costs attributable to this AD may be less than stated above.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that this AD:

- (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.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

See the ADDRESSES section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):



2007-04-16 Boeing: Amendment 39-14948. Docket No. FAA-2005-20351; Directorate Identifier 2003-NM-269-AD.

Effective Date

- (a) This AD becomes effective March 23, 2007.

Affected ADs

- (b) None.

Applicability

- (c) This AD applies to all Boeing Model 767-200, -300, -300F, and -400ER series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reports that certain fuel boost pumps may not have flame arrestors installed in the pump shaft and reports that the pin that holds the flame arrestor in place can break due to metal fatigue. We are issuing this AD to prevent the possible migration of a flame from a main tank fuel boost pump inlet to the vapor space of that fuel tank, and consequent ignition of fuel vapors, which could result in a fire or explosion.

Compliance

- (e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection for Presence/Position of Flame Arrestor in Main Tank Fuel Boost Pumps

(f) For airplanes having line numbers (L/Ns) 1 through 914 inclusive, except as provided by paragraph (h) of this AD: Within 365 days after the effective date of this AD, do a detailed inspection of each main tank fuel boost pump to determine if the pump shaft flame arrestor is installed, a measurement of the flame arrestor's position in the pump, and all applicable corrective actions, by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 767-28A0077 (for Model 767-200, -300, and -300F series airplanes) or Boeing Alert Service Bulletin 767-28A0081 (for Model 767-400ER series airplanes), both Revision 1, both dated July 8, 2004, as applicable. Repeat the measurement of the flame arrestor's position in the pump thereafter at intervals not to exceed the applicable time specified in paragraph (f)(1) or (f)(2) of this AD, until the replacement required by paragraph (i) of this AD is accomplished. All applicable corrective actions must be done before further flight.

Note 1: Any inspection/measurement of the pumps on the left and right main fuel tanks may be done separately provided that the actions are done on all pumps within the compliance time specified in paragraph (f) of this AD.

(1) For airplanes that have accumulated more than 15,000 total flight hours as of the date the initial actions are done in accordance with paragraph (f) of this AD: Repeat the measurement thereafter at intervals not to exceed 6,000 flight hours or 24 months, whichever comes first.

(2) For airplanes that have accumulated 15,000 total flight hours or fewer as of the date the initial actions are done in accordance with paragraph (f) of this AD: Do the measurement specified in paragraph (f) of this AD within 365 days after the date on which the airplane accumulates 15,000 total flight hours or within 24 months after performing the initial inspection required by paragraph (f) of this AD, whichever occurs later. Repeat the measurement thereafter at intervals not to exceed 6,000 flight hours or 24 months, whichever comes first.

Note 2: Boeing Alert Service Bulletins 767-28A0077 and 767-28A0081 reference Hamilton Sundstrand Service Bulletin 5006003-28-2, dated October 25, 2002, as an additional source of service information for accomplishment of the inspection and corrective actions. Although the Hamilton Sundstrand service bulletin specifies to return main tank fuel boost pumps with damaged, broken, or out-of-position flame arrestors to a repair shop, that action is not required by this AD.

Note 3: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

(g) For airplanes having L/Ns 915 and on, except as provided by paragraph (h) of this AD: At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, do a detailed inspection of each main tank fuel boost pump to determine if the pump shaft flame arrestor is installed, a measurement of the flame arrestor's position in the pump, and all applicable corrective actions, by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 767-28A0077 (for Model 767-200, -300, and -300F series airplanes) or Boeing Alert Service Bulletin 767-28A0081 (for Model 767-400ER series airplanes), both Revision 1, both dated July 8, 2004, as applicable. Repeat the measurement of the flame arrestor's position in the pump thereafter at intervals not to exceed 6,000 flight hours or 24 months, whichever comes first, until the replacement required by paragraph (i) of this AD is accomplished. All applicable corrective actions must be done before further flight.

Note 4: Any inspection/measurement of the pumps on the left and right main fuel tanks may be done separately provided that the actions are done on all pumps within the compliance time specified in paragraph (g) of this AD.

(1) For airplanes that have accumulated more than 15,000 total flight hours as of the effective date of this AD, do the actions within 365 days after the effective date of this AD.

(2) For airplanes that have accumulated 15,000 total flight hours or fewer as of the effective date of this AD, do the actions within 365 days after the date on which the airplane accumulates 15,000 total flight hours.

Optional Terminating Action—Records Review

(h) For any period when the part number (P/N) of a main tank fuel boost pump installed on any airplane, as conclusively determined from a review of airplane maintenance records, is P/N 5006003D, no further action is required by paragraphs (f), (g), and (i) of this AD for that pump only.

Replacement of the Main Tank Fuel Boost Pumps

(i) Within 36 months after the effective date of this AD, replace the left and right main tank fuel boost pumps with new or modified pumps in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767-28A0088 (for Model 767-200, -300, and -300F series airplanes) or Boeing Alert Service Bulletin 767-28A0089 (for Model 767-400ER series airplanes), both dated February 24, 2005, as applicable. Accomplishment of the replacement terminates the repetitive measurement requirements of paragraphs (f) and (g) of this AD for that pump only.

Note 5: Any replacement of the pumps on the left and right main fuel tanks may be done separately provided that all pumps are replaced within the compliance time specified in paragraph (i) of this AD.

Note 6: Boeing Alert Service Bulletins 767-28A0088 and 767-28A0089 reference Hamilton Sundstrand Service Bulletin 5006003-28-3, dated December 8, 2004, as the appropriate source of service information for modifying the pump.

Inspections Accomplished According to Previous Issue of Service Bulletin

(j) Inspections accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 767-28A0077, dated March 6, 2003; or Boeing Alert Service Bulletin 767-28A0081, dated March 6, 2003; are considered acceptable for compliance with the corresponding action specified in paragraphs (f) and (g) of this AD.

Parts Installation

(k) As of the effective date of this AD, only main tank fuel boost pumps identified in paragraphs (k)(1) and (k)(2) of this AD may be installed on any airplane.

(1) Any main tank fuel boost pump that has been inspected, and on which all applicable corrective actions have been performed, in accordance with paragraph (f) or (g) of this AD.

(2) Any main tank fuel boost pump having P/N 5006003D.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(m) You must use the applicable service bulletin specified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, S.W., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Table 1 – Material Incorporated by Reference

Boeing Alert Service Bulletin	Revision Level	Date
767-28A0077	1	July 8, 2004
767-28A0081	1	July 8, 2004
767-28A0088	Original	February 24, 2005
767-28A0089	Original	February 24, 2005

Issued in Renton, Washington, on February 5, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-2644 Filed 2-15-07; 8:45 am]