

*Regulations Delegating H-2A Authority to DOL and Extensions of the Effective Date*

On July 13, 2000, the Service published a final rule in the **Federal Register** at 65 FR 43528–43534 delegating the authority to adjudicate certain H-2A petitions for the temporary employment of nonimmigrant aliens in agriculture in the United States to the DOL. The final rule, which amended 8 CFR parts 103 and 214, was to take effect on November 13, 2000. The Service subsequently published final rules to delay the effective date of this transfer of H-2A authority until October 1, 2002. 65 FR 67616 (Nov. 13, 2000); 66 FR 49514 (Sept. 28, 2001).

*Proposed Regulations Regarding Procedures for Processing H-2A Petitions*

On July 13, 2000, and concurrently with the H-2A final delegation of authority rule, the Service published a proposed rule for comment proposing among other things, that all petition requests, extensions of stay, and change of status petitions must be filed with DOL and that the current Service petition fee would be collected by DOL as part of the combined fee.

Concurrently with publication of Service's proposed rule the DOL published at 65 FR 43545 a companion notice of proposed rulemaking (NPRM) setting forth implementation measures necessary for the successful implementation of the delegation of authority to adjudicate petitions.

On August 17, 2000, at 65 FR 50166 the Service reopened and extended the comment period for the proposed rule. Also on August 17, 2000, at 65 FR 50170 the DOL reopened and extended the comment period on its NPRM. In order to obtain additional information from the public relating to the delegation such as the consolidation of forms and the appropriate fees as well as other issues.

*Changes Contained in the Proposed Rule*

The Service's proposed rule required that alien workers sign a petition request for change of status or extension of stay. The Service also proposed that all petition requests including extension of stay and change of status petitions be filed with the DOL. Finally, the rule proposed that the Service's petition filing fee will be collected by DOL.

*Comments Received on the Proposed Rule*

The Service received 20 comments on the proposed rule. The majority of the

commenters expressed dissatisfaction with the Service's delegation of authority to DOL and requested that the Service grant additional time for comments from the public on the delegation. The commenters also expressed concern that it would be difficult for alien beneficiaries to sign the petition.

*Events Necessitating the Withdrawal of the Proposed and Final Rule*

For the reasons explained in the final rule, published elsewhere in this issue of the **Federal Register**, the Service has withdrawn the delegation of H-2A authority contained in the final rule published on July 13, 2000, at 65 FR 43528–45534. Because the delegation of authority will not take place, the Service is also withdrawing this proposed rule which was published in the **Federal Register** on July 13, 2000, at 65 FR 43535.

**Regulatory Flexibility Act**

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is administrative in nature and merely withdraws a proposed rule published in the **Federal Register**.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based companies to compete with foreign-based companies in domestic and export markets.

**Executive Order 12866**

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

**Executive Order 13132**

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

**Executive Order 12988 Civil Justice Reform**

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

**Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a proposed rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

Accordingly, the proposed rule amending 8 CFR parts 103, 214, 248 and 264 published in the **Federal Register** at 65 FR 43535 is withdrawn.

Dated: September 13, 2002.

**James W. Ziglar,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 02–24845 Filed 9–27–02; 1:00 pm]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 2001–NM–172–AD]

RIN 2120–AA64

**Airworthiness Directives; McDonnell Douglas Model MD–90–30 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 MD-90-30 airplanes. This proposal would require a one-time inspection of the single-phase remote control circuit breaker(s) (RCCBs) in a certain area of the electrical/electronic (E/E) compartment to determine the part number and serial number of the RCCB(s), and replacement of certain RCCBs with new or serviceable RCCBs, if necessary. This action is necessary to prevent failure of an RCCB to trip during an overload condition due to a defective braze joint in the RCCB latch assembly, which could result in overheating of the RCCB load wire, and consequent smoke and possible fire in the E/E compartment of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 15, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-172-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 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-172-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:** *Technical Information:* George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA,

Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5341; fax (562) 627-5210.

*Other Information:* Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687-4241, fax (425) 227-1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

#### **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-172-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-172-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

#### **Discussion**

The FAA has received a report from the airplane manufacturer that the latch assemblies on certain single-phase remote control circuit breakers (RCCBs) installed on certain McDonnell Douglas Model MD-90-30 airplanes have a defective braze joint. The defective braze joint is located between the bimetal assembly and the latch. The defective braze joints are limited to two lots of RCCBs, which have specific part numbers and serial numbers. Such defective braze joints could lead to failure of the RCCB to trip during an overload condition, which could result in overheating of the RCCB load wire, and consequent smoke and possible fire in the electrical/electronic (E/E) compartment of the airplane.

#### **Explanation of Relevant Service Information**

We have reviewed and approved McDonnell Douglas Alert Service Bulletin MD90-24A053, Revision 01, dated February 23, 2001. That service bulletin describes procedures for performing a one-time inspection of the RCCB or RCCBs, as applicable, at station Y=120.050 in the E/E compartment of the airplane to determine the part number and serial number of the installed RCCB(s). For airplanes with an affected RCCB, the service bulletin also describes procedures for replacing the RCCB with a new or serviceable RCCB. The replacement RCCB should be of the same part number as the existing part with a serial number that is not from the affected lots. 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, except as discussed below.

#### **Difference Between Proposed Rule and Referenced Service Bulletin**

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin specify to

complete a form to report inspection findings to Boeing, this proposed AD would not require this action. The FAA does not need this information from operators.

### Cost Impact

There are approximately 86 airplanes of the affected design in the worldwide fleet. We estimate that 21 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be \$1,260, or \$60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this 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. For affected airplanes within the period under the warranty agreement, we have been advised that manufacturer warranty remedies may be available for labor costs associated with accomplishing the inspection required by this proposed AD. Therefore, the future economic cost impact of this AD may be less than the cost impact figure indicated above.

### 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–172–AD.

**Applicability:** Model MD–90–30 airplanes as listed in McDonnell Douglas Alert Service Bulletin MD90–24A053, Revision 01, dated February 23, 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 failure of a remote control circuit breaker (RCCB) to trip during an overload condition due to a defective braze joint in the RCCB latch assembly, which could result in overheating of the RCCB load wire, and consequent smoke and possible fire in the electrical/electronic (E/E) compartment of the airplane, accomplish the following:

#### Inspection and Replacement, If Necessary

(a) Within 6 months after the effective date of this AD, perform a one-time inspection of the single-phase RCCB or RCCBs, as applicable, at station Y=120.050 in the E/E compartment of the airplane to determine the part number and serial number of the

RCCB(s), per the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD90–24A053, Revision 01, dated February 23, 2001.

(1) If an RCCB has a part number that is not listed in Table 1, Figure 1, or Table 2, Figure 2, of the service bulletin, as applicable: No further action is required by this AD for that RCCB. It is not necessary to report findings to Boeing by completing the form in the Appendix of the service bulletin.

(2) If an RCCB has a part number that is listed in Table 1, Figure 1, or Table 2, Figure 2, of the service bulletin, as applicable, and the corresponding serial number is not identified in that table: No further action is required by this AD for that RCCB. It is not necessary to report findings to Boeing by completing the form in the Appendix of the service bulletin.

(3) If an RCCB has a part number that is listed in Table 1, Figure 1, or Table 2, Figure 2, of the service bulletin, as applicable; and the corresponding serial number is identified in that table: Before further flight, replace the RCCB with a new or serviceable RCCB per the Accomplishment Instructions of the service bulletin. The replacement RCCB must have the same part number as the part being replaced, and a serial number that is not identified in Table 1, Figure 1, or Table 2, Figure 2, of the service bulletin, as applicable. It is not necessary to report findings to Boeing by completing the form in the Appendix of 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 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.

Issued in Renton, Washington, on September 23, 2002.

**Ali Bahrami,**

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