

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. 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 FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**2005-08-10 Boeing:** Amendment 39-14062. Docket No. FAA-2004-19810; Directorate Identifier 2004-NM-119-AD.

#### Effective Date

(a) This AD becomes effective May 24, 2005.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Boeing Model 737-600, -700, and -800 series airplanes, as identified in Boeing Special Attention Service Bulletin 737-54-1040, Revision 1, dated August 14, 2003; certificated in any category.

### Unsafe Condition

(d) This AD was prompted by a report that an injection seal in the engine strut area may not have been properly completed or installed during production. We are issuing this AD to prevent flammable fluid (such as fuel or hydraulic fluid) from leaking onto a hot engine exhaust nozzle or into the engine core fire zone, and consequently causing an uncontrolled 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 and Corrective Action

(f) Within 18 months or 3,500 flight cycles after the effective date of this AD, whichever occurs first: Do a general visual inspection for sealant at the interface of the upper spar fittings, strut side skins, and the fittings of the thrust reverser strut fairing on the engine struts, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737-54-1040, dated November 14, 2002; or Revision 1, dated August 14, 2003.

(1) If the injection seal is found to properly seal the entire gap, no further action is required by this AD.

(2) If the injection seal is not found to properly seal the entire gap or if the injection seal is found to be missing, before further flight, apply an injection seal or silicone sponge rubber with fillet seal in accordance with the Accomplishment Instructions of the service bulletin.

### Alternative Methods of Compliance (AMOCs)

(g) 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.

### Material Incorporated by Reference

(h) You must use Boeing Special Attention Service Bulletin 737-54-1040, dated November 14, 2002; or Boeing Special Attention Service Bulletin 737-54-1040, Revision 1, dated August 14, 2003; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, go to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration. For information on the availability of this material at the NARA, call (202) 741-6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on April 11, 2005.

**Ali Bahrami,**

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

[FR Doc. 05-7685 Filed 4-18-05; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2003-NM-278-AD; Amendment 39-14063; AD 2005-08-11]**

**RIN 2120-AA64**

### Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that requires replacement of certain hydraulic hoses with new hydraulic hoses. This action is necessary to prevent cracking and/or rupture and subsequent failure of hydraulic hoses. Such failure could result in loss of hydraulic pressure and fluid quantity, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective May 24, 2005.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 24, 2005.

**ADDRESSES:** The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S-581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the 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/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601

Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2125; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published in the **Federal Register** on March 5, 2004 (69 FR 10387). That action proposed to require replacement of certain hydraulic hoses with new hydraulic hoses.

#### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

#### Request To Withdraw Proposed Rule

One commenter, an operator, notes that since the publication of the proposed AD, the manufacturer has revised Section F of the Airworthiness Limitations Section of the SAAB 340 maintenance review board (MRB) document to Revision 3. The commenter states that the revised Airworthiness Limitations Section includes the replacement of the hydraulic hoses at the life-limits specified in SAAB Service Bulletin 340-29-022, Revision 01, dated February 20, 2003. The commenter states that, since the replacement of the hydraulic hoses is now in the Airworthiness Limitations Section, the proposed AD is not needed.

The FAA partially agrees. Revision 03 of the SAAB 340 MRB document was issued in October 2004. However, we are currently reviewing Revision 04 of the document, which, among other changes, addresses the replacement times for the hydraulic hoses.

The fact that the proposed revision to the Airworthiness Limitations Section now includes the replacement of the hydraulic hoses at the life-limits specified in the proposed AD does not mean that AD action is not necessary. Revisions to the Airworthiness Limitations Section that occur after a type certificate has been issued are not mandatory. An AD is the appropriate vehicle for mandating the changes to the Airworthiness Limitations Section. Also, the Airworthiness Limitations Section does not address what actions should be taken for hydraulic hoses that have already exceeded the 12,000 flight cycle limit. This AD mandates the replacement of hydraulic hoses that have already exceeded the 12,000 flight cycle limit. Once we have approved Revision 04 of the Airworthiness Limitations Section, we may consider

additional rulemaking action to mandate repetitive replacement of the hydraulic hoses. No change has been made to this final rule in this regard.

#### Request To Include a Deferral From Compliance With the Airworthiness Limitations

One commenter, the manufacturer, notes that the parallel Swedish airworthiness directive, SAD-170, became effective on December 17, 2001, and had a compliance time of two years. The commenter notes that, since the expiration of the compliance time for that airworthiness directive, a revision of Section F, Airworthiness Limitations Section, of the MRB document was planned to include the hydraulic hoses and life-limits specified in SAAB Service Bulletin 340-29-022, Revision 01. The commenter notes that (at the time of comment submittal) the proposed release date of Revision 03 of the MRB document is May 2004.

The commenter states that, due to the absence of an FAA AD, U.S. operators may not have performed the actions in the service bulletin and must apply for a deferral from the requirements of the MRB report so that airplanes are not grounded until the hydraulic hoses have been replaced. The commenter also states that there is a compliance time conflict between the FAA AD and the proposed revision to the Airworthiness Limitations Section. The commenter suggests that it is necessary to include a statement in the FAA AD to give operators a deferral from the MRB report requirements until the compliance time in the FAA AD has expired.

We do not agree with the commenter's request to include a deferral from the requirements of the MRB report in this final rule. The MRB report is not mandatory for operators to follow unless the MRB requirements are required by an AD. Therefore, a deferral from the requirements of the MRB is not necessary. As stated previously, the latest revision (Revision 04) of Section F, Airworthiness Limitations Section, of the MRB document has not yet been FAA-approved. Once we have approved the document, we may consider additional rulemaking to require those actions specified in the document that relate to this AD. Therefore, at this time, no compliance time conflict exists between our AD and the Airworthiness Limitations Section, and no deferral is necessary. No change has been made to this final rule in this regard.

#### Request for Credit for Accomplishment of Original Issue of Service Bulletin

One commenter requests that, if an AD is issued, the original issue of SAAB

Service Bulletin 340-29-022, dated December 14, 2001, be considered as an additional acceptable source of service information. The commenter states that considering the original issue of the service bulletin as an additional acceptable source of service information would save both operators and the FAA time and effort in requesting and addressing AMOCs. The commenter states that its fleet of SAAB 340B airplanes was modified per the original issue of the service bulletin. The commenter also states that it did not use the procedures for identification of the replacement hydraulic hoses that are included in the original issue and Revision 1 of the service bulletin. Instead, the commenter used the procedures mandated in section 45.14 of the Federal Aviation Regulations (14 CFR 45.14), "Identification of critical components." The commenter notes that it did not replace flap actuator hoses because those hoses had never failed. The commenter states that it used airplane cycles at the time of replacement of each hydraulic hose to start tracking the 12,000-flight-cycle life-limit for each hose.

We agree with the commenter's request. A new paragraph (b) has been included in this final rule and the subsequent paragraphs reidentified accordingly. The new paragraph (b) states that accomplishment of the original issue of SAAB Service Bulletin 340-29-022, dated December 14, 2001, is an additional appropriate source of service information. The paragraph also states that identifying newly installed hydraulic hoses by using the procedures mandated in section 45.14 of the Federal Aviation Regulations (14 CFR 45.14), "Identification of critical components," is acceptable for compliance with the requirements of the AD.

#### Request To Change References to Service Information

One commenter, the manufacturer, requests that the "Explanation of Relevant Service Information" paragraph in the proposed AD be changed to include the statement "Saab has issued Service Bulletin 340-29-022, Revision 01, dated February 20, 2003, and will soon issue revision 2." The commenter also requests that paragraph (a) of the proposed AD be changed to "\* \* \* Accomplishment Instructions of Saab Service Bulletin 340-29-022, Revision 01, dated February 20, 2003, or later revision." The commenter states that Revision 02 of SAAB Service Bulletin 340-29-022 will be released soon, but the exact release date has not been decided. Revision 02 will include

two new hydraulic hose part numbers that can be ordered and used as replacement parts. (Revision 01 of the service bulletin is referenced in the proposed AD for accomplishment of the actions.)

Since the issuance of the proposed AD Saab has issued Service Bulletin 340–29–022, Revision 02, dated May 5, 2004. We agree with the intent of the commenter's requests to reference Revision 02 of the service bulletin in this AD. We have revised paragraph (a) of this AD to include Revision 02 of the service bulletin as an additional appropriate source of service information. The "Explanation of Relevant Service Information" paragraph is not restated in this AD, so no change to that paragraph is possible in this AD.

We cannot use the phrase, "or later revision," in an AD when referring to the service document because doing so violates Office of the Federal Register (OFR) regulations for approval of materials "incorporated by reference" in rules. In general terms, we are required by these OFR regulations to either publish the service document contents as part of the actual AD language; or submit the service document to the OFR for approval as "referenced" material, in which case we may only refer to such material in the text of an AD. The AD may refer to the service document only if the OFR approved it for "incorporation by reference." To allow operators to use later revisions of the referenced document (issued after publication of the AD), either we must revise the AD to reference specific later revisions, or operators must request approval to use later revisions as an AMOC with this AD under the provisions of paragraph (c) of this AD.

### Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule 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.

### Cost Impact

We estimate that 308 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required actions, and that the average labor rate is \$65 per work hour. Required parts will cost approximately \$1,600 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is

estimated to be \$592,900, or \$1,925 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. 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 adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

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

**2005–08–11 Saab Aircraft AB:** Amendment 39–14063. Docket 2003–NM–278–AD.

**Applicability:** Model SAAB SF340A series airplanes having serial numbers 004 through 159 inclusive, and SAAB 340B series airplanes having serial numbers 160 through 459 inclusive; certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent cracking and/or rupture and subsequent failure of hydraulic hoses, which could result in loss of hydraulic pressure and fluid quantity, and consequent reduced controllability of the airplane, accomplish the following:

#### Replacement of Hydraulic Hoses

(a) Replace the hydraulic hoses leading to the actuators of the flaps, main landing gear, nose landing gear (NLG), NLG downlock, and NLG wheel well, with new hydraulic hoses by doing all of the actions per the Accomplishment Instructions of Saab Service Bulletin 340–29–022, Revision 01, dated February 20, 2003; or Saab Service Bulletin 340–29–022, Revision 02, dated May 5, 2004. Do the replacement at the times specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable.

(1) For airplanes on which affected hydraulic hoses have accumulated 12,000 or more total flight cycles since new: Within the next 5,000 flight cycles or 24 months after the effective date of this AD, whichever is first.

(2) For airplanes on which affected hydraulic hoses have accumulated less than 12,000 total flight cycles since new: Before the accumulation of 12,000 total flight cycles or within 24 months after the effective date of this AD, whichever is later.

#### Actions Accomplished Previously

(b) Accomplishment of the specified replacement before the effective date of this AD per Saab Service Bulletin 340–29–022, dated December 14, 2001; or identification of newly installed hoses using the procedures in section 45.14 of the Federal Aviation Regulations (14 CFR 45.14), "Identification of critical components"; are considered acceptable for compliance with the applicable requirements of this AD.

#### Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

#### Incorporation by Reference

(d) Unless otherwise specified in this AD, the actions shall be done in accordance with Saab Service Bulletin 340–29–022, Revision 01, dated February 20, 2003; or Saab Service Bulletin 340–29–022, Revision 02, dated May 5, 2004. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft

Product Support, S-581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., 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/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

**Note 1:** The subject of this AD is addressed in Swedish airworthiness directive 1-170, dated December 17, 2001.

#### Effective Date

(e) This amendment becomes effective on May 24, 2005.

Issued in Renton, Washington, on April 11, 2005.

**Ali Bahrami,**

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

[FR Doc. 05-7686 Filed 4-18-05; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9198]

**RIN 1545-AY42**

#### **Guidance Under Section 355(e); Recognition of Gain on Certain Distributions of Stock or Securities in Connection With an Acquisition**

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

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations under section 355(e) of the Internal Revenue Code relating to the recognition of gain on certain distributions of stock or securities of a controlled corporation in connection with an acquisition. Changes to the applicable law were made by the Taxpayer Relief Act of 1997. These regulations affect corporations and are necessary to provide them with guidance needed to comply with those changes.

**DATES:** *Effective Date:* These regulations are effective April 19, 2005.

*Applicability Date:* For dates of applicability, see § 1.355-7(k).

**FOR FURTHER INFORMATION CONTACT:** Amber R. Cook, (202) 622-7530 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### **Background and Explanation of Provisions**

This document contains amendments to 26 CFR part 1 under section 355(e) of the Internal Revenue Code (Code). Section 355(e) provides that the stock of a controlled corporation will not be qualified property under section 355(c)(2) or 361(c)(2) if the stock is distributed as “part of a plan (or series of related transactions) pursuant to which 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation.”

On April 26, 2002, temporary regulations (TD 8988) (the 2002 temporary regulations) were published in the **Federal Register** (67 FR 20632). The 2002 temporary regulations provide guidance concerning the interpretation of the phrase “plan (or series of related transactions).” A notice of proposed rulemaking (REG-163892-01) (the 2002 proposed regulations) cross-referencing the 2002 temporary regulations was published in the **Federal Register** for the same day (67 FR 20711).

The 2002 temporary regulations provide that whether a distribution and an acquisition are part of a plan is determined based on all the facts and circumstances and set forth a nonexclusive list of factors that are relevant in making that determination. The 2002 temporary regulations also provide that a distribution and a post-distribution acquisition not involving a public offering can be part of a plan only if there was an agreement, understanding, arrangement, or substantial negotiations regarding the acquisition or a similar acquisition at some time during the two-year period preceding the distribution (the post-distribution acquisition rule). Finally, the 2002 temporary regulations set forth seven safe harbors. The satisfaction of any one of these safe harbors confirms that a distribution and an acquisition are not part of a plan.

No public hearing was requested or held for the 2002 proposed regulations. Written and electronic comments responding to the notice of proposed rulemaking were received. After consideration of the comments, the 2002 proposed regulations are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed. The more significant comments and revisions are discussed below.

#### *A. Pre-Distribution Acquisitions Not Involving a Public Offering*

The 2002 temporary regulations include a safe harbor, Safe Harbor IV, that may be available for a pre-distribution acquisition. That safe harbor provides that an acquisition and a distribution that occurs more than two years after the acquisition are not part of a plan if there was no agreement, understanding, arrangement, or substantial negotiations concerning the distribution at the time of the acquisition or within six months thereafter. In addition to Safe Harbor IV, the 2002 temporary regulations identify a number of factors that are relevant in determining whether a distribution and a pre-distribution acquisition not involving a public offering are part of a plan. Among the factors tending to show that a distribution and a pre-distribution acquisition not involving a public offering are not part of a plan is the absence of discussions by the distributing corporation (Distributing) or the controlled corporation (Controlled) with the acquirer regarding a distribution during the two-year period before the acquisition (the no-discussions factor). The absence of such discussions, however, will not tend to show that a distribution and an acquisition are not part of a plan if the acquisition occurs after the date of the public announcement of the planned distribution (the public announcement restriction).

Commentators have suggested that, under the 2002 temporary regulations, it is more difficult to establish that a distribution and a pre-distribution acquisition not involving a public offering are not part of a plan than it is to establish that a distribution and a post-distribution acquisition are not part of a plan. This suggestion is based in part on the fact that the 2002 temporary regulations include the post-distribution acquisition rule for post-distribution acquisitions but no analogous rule for pre-distribution acquisitions.

Commentators have proposed extending the availability of Safe Harbor IV by reducing the period between the acquisition and the distribution from two years to one year. They have also suggested adopting a new safe harbor that would be available for acquisitions of Distributing that occur before a pro rata distribution. Finally, commentators have suggested that the public announcement restriction on the no-discussions factor be eliminated because a public announcement, as a practical matter, commits Distributing to attempt the distribution and, thus, is strong evidence that the distribution would