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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-25079; Directorate Identifier 2006-NM-065-AD; Amendment 39-14885; AD 2007-01-13]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A310-300 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A310-300 airplanes. This AD requires replacing the existing non-return valve (NRV) of the auxiliary center tanks (ACTs) of the fuel system with a new, improved NRV. This AD results from a report that it was not possible to transfer fuel from ACTs 1 and 2 during flight, and no electronic centralized aircraft monitor warnings were triggered. Investigation revealed a faulty static inverter and blown fuse, resulting in failure of certain fueling bus bars and subsequent failure of the automatic ACT fuel transfer. We are issuing this AD to prevent these failures, combined with failure of the NRV to close. If the NRV is open during flight, the fuel supply to the engines may be reduced during cross-feed operation to the extent that fuel starvation could occur and result in engine flameout.

DATES: This AD becomes effective March 6, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 6, 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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1622; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (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 notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A310-300 airplanes. That NPRM was published in the Federal Register on June 20, 2006 (71 FR 35400). That NPRM proposed to require replacing the existing non-return valve (NRV) of the auxiliary center tanks (ACTs) of the fuel system with a new, improved NRV.

Comments

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

Request To Clarify Applicability

Airbus asks that the applicability specified in paragraph (c) of the NPRM be clarified. Airbus states that the applicability excludes airplanes on which Airbus Modification 8928 was embodied during production. Airbus has the following reservations:

During production, Airbus Modification 8928 could be embodied either "completely" or "partially." This means that, for airplanes on which the modification was partially embodied, NRV part number (P/N) C23AE0103s could be fitted in the outer tanks and other positions; any combination of P/Ns C23AE0102s and C23AE0103s could be fitted and operators could claim full accomplishment of the modification. However, this exception is fully valid for airplanes on which Airbus Modification 8928 has been completely embodied. As a "safety principle" Airbus recommends excluding airplanes on which Airbus Modification 8928 has been completely embodied (i.e., Airbus Model A310-300 airplanes, with manufacturer serial numbers 0636 through 0706 inclusive).

Airbus also states that, as specified in the applicability of the French airworthiness directive, the AD is applicable to airplanes equipped with ACTs, or provisioned to receive ACTs. Airbus notes that airplanes equipped with provisions for ACTs on which either Airbus (production) Modifications 6918 and 6919 or 6918, 6919, and 8339 have been installed could also be fitted with NRVs having P/N C23AE0102.

We agree that the applicability specified in paragraph (c) of this AD should be clarified, and we have included additional information which we determined would add further clarity regarding the possible installation of a NRV, as identified by Airbus. We have changed the applicability as follows: "This AD applies to Airbus Model A310-304, -308, -324, and -325 airplanes, certificated in any category; equipped with one or more auxiliary center tanks (ACTs); on which either Airbus (production) Modifications 6918 and 6919 or 6918, 6919, and 8339 have been installed; except those on which Airbus Modification 8928 has been done in production."

Request To Incorporate-by-Reference the Relevant Service Information

The Modification and Replacement Parts Association (MARPA) states that the NPRM references two documents for accomplishing the specified actions. MARPA adds that neither of these documents is incorporated by reference in the NPRM pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. MARPA notes that because the service information is not incorporated by reference, it has copyright protection against duplication and distribution by anyone, including the U.S. Government. MARPA adds that when an otherwise private document is incorporated by reference into a public document, such as an AD, it loses its protections and becomes a public document. MARPA believes that mandatory reference to a private document in order to comply with a rule is fatally flawed, unless the private document is incorporated by reference, thereby making it public. MARPA believes that public laws, by definition, should be public, which means they cannot rely upon private writings for compliance. MARPA asks that all service documents required for accomplishing the mandated work be incorporated by reference.

We do not agree that documents should be incorporated by reference during the NPRM phase of rulemaking. 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 document 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, as noted by the commenter, 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 that service documents be made available to the public by publication in the Federal Register, we agree that incorporation by reference was authorized to reduce the volume of material published in the Federal Register and the Code of Federal Regulations. However, as specified in the Federal Register Document Drafting Handbook, the Director of the OFR decides when an agency may incorporate material by reference. As the commenter is aware, the OFR files documents for public inspection on the workday before the date of publication of the rule at its office in Washington, D.C. As stated in the Federal Register Document Drafting Handbook, when documents are filed for public inspection, anyone may inspect or copy file documents during the OFR's hours of business. Further questions regarding publication of documents in the Federal Register or incorporation by reference should be directed to the OFR.

Request To Publish Service Information in the Docket Management System (DMS)

MARPA states that service documents incorporated by reference should be made available to the public by publication in the DMS, keyed to the action that incorporates those documents. MARPA adds that under the aforementioned authorities, incorporation by reference is a technique used to reduce the size of the Federal Register when the information is already available to the affected individuals. MARPA adds that, traditionally, "affected individuals" means aircraft owners and operators, who are generally provided service information by the manufacturer. MARPA adds 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 notes that this new class includes maintenance and repair organizations, component servicing, and/or servicing alternatively certified parts under section 21.303 ("Replacement and modification parts") of the Federal Aviation Regulations (14 CFR 21.303). MARPA notes that the concept of brevity is now nearly archaic as documents exist more frequently in electronic format than on paper. Therefore, MARPA asks that the service documents deemed essential to the accomplishment of the NPRM be incorporated by reference into the regulatory instrument and published in DMS.

In regard to MARPA'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 comments.

Request To Reference Parts Manufacturer Approval (PMA) Parts

MARPA states that type certificate holders in their service documents universally ignore the possible existence of PMA parts. According to MARPA, this is especially true with foreign manufacturers where the concept may not exist or be implemented in the country of origin. MARPA states that frequently the service bulletin upon which an AD is based will require the removal of a certain part number and the installation of a different part number as a corrective action. MARPA states that this practice runs afoul of 14 CFR 21.303, which permits the development, certification, and installation of alternatively certified parts (PMA). MARPA states that mandating the installation of a certain part number to the exclusion of all other parts is not a favored general practice. According to MARPA, such action has the dual effect of preventing, in some cases, the installation of perfectly good parts, while at the same time prohibiting the development of new parts permitted under 14 CFR 21.303. MARPA states that such a prohibition runs the risk of taking the AD out of the realm of safety and into the world of economics since prohibiting the development, sale, and use of a perfectly airworthy part has nothing to do with safety. MARPA adds that courts could easily construe such actions as being outside the statutory basis of the AD (safety), and thus unenforceable. MARPA adds that courts are reluctant to find portions of rule unenforceable since they lack the knowledge and authority to rewrite requirements, and are generally inclined to void the entire rule.

We do not agree to change the AD to permit installation of any equivalent PMA parts so that it is not necessary for an operator to request approval of an alternative method of compliance (AMOC) in order to install an "equivalent" PMA part. Whether an alternative part is "equivalent" in adequately resolving the unsafe condition can only be determined on a case-by-case basis based on a complete understanding of the unsafe condition. We are not currently aware of any such parts. Our policy is that, in order for operators to replace a part with one that is not specified in the AD, they must request an AMOC. This is necessary so that we can make a specific determination that an alternative part is or is not susceptible to the same unsafe condition.

In response to MARPA's statement regarding a practice that "runs afoul of 14 CFR 21.303," under which the FAA issues PMAs, this statement appears to reflect a misunderstanding of the relationship between ADs and the certification procedural regulations of part 21 of the Federal Aviation Regulations (14 CFR part 21). Those regulations, including section 21.303 of the Federal Aviation Regulations (14 CFR 21.203), are intended to ensure that aeronautical products comply with the applicable airworthiness standards. But ADs are issued when, notwithstanding those procedures, we become aware of unsafe conditions in these products or parts. Therefore, an AD takes precedence over design approvals when we identify an unsafe condition, and mandating installation of a certain part number in an AD is not at variance with section § 21.303.

The AD provides a means of compliance for operators to ensure that the identified unsafe condition is addressed appropriately. For an unsafe condition attributable to a part, the AD normally identifies the replacement parts necessary to obtain that compliance. As stated in section 39.7 of the Federal Aviation Regulations (14 CFR 39.7), "Anyone who operates a product that does not meet the requirements of an applicable AD is in violation of this section." Unless an operator obtains approval for an AMOC, replacing a part with one not specified by the AD would make the operator subject to an enforcement action and result in a civil penalty. We have not changed the AD in this regard.

Request To Allow Use of PMA Parts

MARPA reiterates paragraph 9.a.(4) of draft FAA Order 8040.2 and notes that the draft order states that replacement or installation of certain parts could have replacement parts approved under 14 CFR 21.303 based on a finding of identity. MARPA adds that any parts approved and installed under this regulation should be subject to the actions of the AD and included in the applicability. MARPA states that the NPRM does not appear to have considered this aspect; and it should be adjusted to give due consideration to the possible existence of alternatively certified parts before issuance. MARPA asserts that the service documents referred to in the NPRM require the installation of a specific "new and improved" parts to the exclusion of all other parts; which predicated the following comments. MARPA has, on numerous occasions, objected to the Transport Airplane Directorate's (TAD's) practice of mandating the installation of a certain part as the sole method of compliance with an AD. MARPA's belief has been, and remains, that such practice violates 14 CFR 21.303 by enjoining the installation of approved parts, while simultaneously prohibiting the development of other parts, both of which were not intended by Congress. MARPA disagrees with TAD's general response, which has been that MARPA simply does not understand that ADs take precedence over all other statutory requirements. MARPA suggests that we adopt language used in ADs issued by directorates other than the TAD, which specifies installing an "FAA-approved equivalent part number" or "airworthy parts." MARPA, therefore, requests that we revise the NPRM to allow use of PMA parts.

MARPA adds that, in the past, the TAD addressed this issue by requiring an AMOC to use a PMA part, when it had been determined that the OEM part is defective; that action appears to defy logic. MARPA states that when a PMA is granted, a part is approved for installation and it cannot be "unapproved" by any action without cause; a defective OEM part is not cause for invalidating a PMA when the PMA part is not defective; this is not addressed in the AD.

We do not agree to revise this AD. The NPRM did not address 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. We acknowledge the need to ensure that unsafe PMA parts are identified and addressed in MCAI-related ADs. We are currently examining all aspects of this issue, including input from industry. Once we have made a final determination, we will consider how our policy regarding PMA parts in ADs needs to be revised. We consider that to delay this 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, no change has been made to the AD in this regard.

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 11 airplanes of U.S. registry. The replacement will take about 1 work hour per airplane, at an average labor rate of \$80 per work hour. Required parts will cost about \$368 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is \$4,928, or \$448 per airplane.

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):



2007-01-13 Airbus: Amendment 39-14885. Docket No. FAA-2006-25079; Directorate Identifier 2006-NM-065-AD.

Effective Date

- (a) This AD becomes effective March 6, 2007.

Affected ADs

- (b) None.

Applicability

(c) This AD applies to Airbus Model A310-304, -308, -324, and -325 airplanes, certificated in any category; equipped with one or more auxiliary center tanks (ACTs); on which either Airbus (production) Modifications 6918 and 6919 or 6918, 6919, and 8339 have been installed; except those on which Airbus Modification 8928 has been done in production.

Unsafe Condition

(d) This AD results from a report that it was not possible to transfer fuel from ACTs 1 and 2 during flight, and no electronic centralized aircraft monitor warnings were triggered. Investigation revealed a faulty static inverter and blown fuse, resulting in failure of certain fueling bus bars and subsequent failure of the automatic ACT fuel transfer. We are issuing this AD to prevent these failures, combined with failure of the non-return valve (NRV) to close. If the NRV is open during flight, the fuel supply to the engines may be reduced during cross-feed operation to the extent that fuel starvation could occur and result in engine flameout.

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.

Replacement

(f) Within 15,000 flight hours after the effective date of this AD: Replace the existing NRV with a new, improved NRV by doing all the actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310-28-2158, dated September 1, 2005.

Note 1: The Airbus service bulletin refers to Lucas Air Equipment Service Bulletin C23AE01-28-01, Revision 1, dated July 20, 1994, as an additional source of service information for replacing the NRV.

Parts Installation

(g) As of the effective date of this AD, no person may install, on any airplane, a NRV having part number C23AE0102, unless it has been modified according to paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, International Branch, ANM-116, Transport Airplane Directorate, 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.

Related Information

(i) French airworthiness directive F-2005-197, dated December 7, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Airbus Service Bulletin A310-28-2158, dated September 1, 2005, 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 this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL-401, Nassif Building, Washington, DC; on the Internet at <http://dms.dot.gov>; or at the National Archives and Records Administration (NARA). 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.

Issued in Renton, Washington, on December 26, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-1208 Filed 1-29-07; 8:45 am]