

(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),

(3) Will not affect intrastate aviation in Alaska, and

(4) 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.

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 AD:

2018-07-14 Pacific Aerospace Limited:

Amendment 39-19245; Docket No. FAA-2018-0285; Directorate Identifier 2018-CE-010-AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 30, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Pacific Aerospace Limited Model 750XL airplanes, certificated in any category:

(1) All serial numbers equipped with modification PAC/XL/0582; and

(2) serial numbers 193 through 197, 199, 200, and 203.

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as insufficient engagement of the couplings with the flex drive of the rudder trim drive system. We are issuing this AD to prevent disengagement of the rudder and/or elevator trim drive, which could result in increased workload on the pilot and possible loss of control.

(f) Actions and Compliance

Unless already done, within 60 days after April 30, 2018 (the effective date of this AD), remove the rudder and elevator drive shaft couplings, part number (P/N) 11-49023-1, and replace with P/N 11-49023-3 at fuselage stations 115.34 and 180.85, ensuring proper engagement of the drive ends. Follow the Accomplishment Instructions in Pacific Aerospace Mandatory Service Bulletin PACSB/XL/085, Issue 1, dated January 8, 2018.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Small Airplane Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4144; fax: (816) 329-4090; email: mike.kiesov@faa.gov. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, Small Airplane Standards Branch, FAA; or the Civil Aviation Authority of New Zealand (CAA).

(h) Related Information

Refer to the MCAI by the CAA, AD DCA/750XL/26, dated February 28, 2018, for related information. You may examine the MCAI on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0285.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Pacific Aerospace Mandatory Service Bulletin PACSB/XL/085, Issue 1, dated January 8, 2018.

(ii) Reserved.

(3) For service information identified in this AD, contact Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; phone: +64 7843 6144; fax: +64 843 6134; email: pacific@aerospace.co.nz; Internet: www.aerospace.co.nz.

(4) You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148. It is also available on the internet at <http://www.regulations.gov> by searching for locating Docket No. FAA-2018-0285.

(5) You may view this service information that is incorporated by reference 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>.

Issued in Kansas City, Missouri, on March 30, 2018.

Pat Mullen,

Acting Deputy Director, Policy & Innovation Division, Aircraft Certification Service

[FR Doc. 2018-06950 Filed 4-6-18; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2017-0810; Product Identifier 2017-NM-045-AD; Amendment 39-19240; AD 2018-07-09]

RIN 2120-AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model CL-600-2C10 (Regional Jet Series 700, 701, & 702), Model CL-600-2D15 (Regional Jet Series 705), Model CL-600-2D24 (Regional Jet Series 900), and Model CL-600-2E25 (Regional Jet Series 1000) airplanes. This AD was prompted by a report of a smoke-in-cabin event due to a non-sustaining electrical fire. This AD requires installation of protective sleeves on the bonding jumper wires of affected galleys and lavatories. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 14, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 14, 2018.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone: 1-866-538-1247 or direct-dial telephone: 1-514-855-2999; fax: 514-855-7401; email: ac.yul@aero.bombardier.com; internet: <http://www.bombardier.com>. You may view this referenced service information at the FAA, Transport

Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-0810.

Examining the AD Docket

You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-0810; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone: 800-647-5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516-228-7301; fax: 516-794-5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model CL-600-2C10 (Regional Jet Series 700, 701, & 702), Model CL-600-2D15 (Regional Jet Series 705), Model CL-600-2D24 (Regional Jet Series 900), and Model CL-600-2E25 (Regional Jet Series 1000) airplanes. The NPRM published in the **Federal Register** on September 13, 2017 (82 FR 42953) (“the NPRM”). The NPRM was prompted by a report of

a smoke-in-cabin event due to a non-sustaining electrical fire. The NPRM proposed to require installation of protective sleeves on the bonding jumper wires of affected galleys and lavatories. We are issuing this AD to prevent an electrical short of a bonding jumper wire that may result in in-flight smoke or fire events, as well as failure of avionics equipment, due to possible water spray or leakage from a damaged water supply line.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF-2016-20R1, dated February 3, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Bombardier, Inc., Model CL-600-2C10 (Regional Jet Series 700, 701, & 702), Model CL-600-2D15 (Regional Jet Series 705), Model CL-600-2D24 (Regional Jet Series 900), and Model CL-600-2E25 (Regional Jet Series 1000) airplanes. The MCAI states:

A CRJ900 aeroplane reported a smoke in cabin event due to a non-sustaining electrical fire. The source of smoke was traced to a burnt heated water supply line behind the #2 Galley. The surrounding insulation was also found burnt.

The root cause of this electrical fire was an electrical short between an un-insulated bonding jumper and a terminal block carrying 115 volts AC. The circuit resistance was high enough and the circuit breakers that protect the wiring did not trip open.

Electrical short of a bonding jumper may result in in-flight smoke or fire events as well as failure of avionics equipment due to possible water spray or leakage from a damaged water supply line. The likelihood of this happening is increased by the removal and installation of the galley or lavatory during maintenance, allowing the bonding jumper to become wedged under the terminal block.

* * * * *

Revision 1 of this [Canadian] AD is issued to mandate [the installation of protective sleeves on the galley and lavatory bonding jumper wires in accordance with]

Bombardier Service Bulletin (SB) 670BA-25-101 Revision B dated 12 January 2017.
* * *

You may examine the MCAI in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-0810.

Comments

We gave the public the opportunity to participate in developing this final rule. We considered the comment received. The Air Line Pilots Association, International supported the NPRM.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 14 CFR Part 51

Bombardier, Inc., has issued Service Bulletin 670BA-25-101, Revision B, dated January 12, 2017. The service information describes procedures for installation of protective sleeves on the bonding jumper wires of affected galleys and lavatories. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 544 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Install protective sleeves	10 work-hours × \$85 per hour = \$850	Negligible	\$850	\$462,400

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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

Regulatory Findings

We 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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
3. Will not affect intrastate aviation in Alaska, and
4. 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.

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):

2018–07–09 Bombardier, Inc.: Amendment 39–19240; Docket No. FAA–2017–0810; Product Identifier 2017–NM–045–AD.

(a) Effective Date

This AD is effective May 14, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category, all certificated models.

(1) Bombardier, Inc., Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10001 through 10344 inclusive.

(2) Bombardier, Inc., Model CL–600–2D15 (Regional Jet Series 705) and Model CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15382 inclusive.

(3) Bombardier, Inc., Model CL–600–2E25 (Regional Jet Series 1000) airplanes, serial numbers 19001 through 19044 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Reason

This AD was prompted by a report of a smoke-in-cabin event due to a non-sustaining electrical fire. We are issuing this AD to prevent an electrical short of a bonding jumper wire that may result in in-flight smoke or fire events, as well as failure of avionics equipment, due to possible water spray or leakage from a damaged water supply line.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Protective Sleeve Installation

(1) For airplanes on which the actions specified in Bombardier Service Bulletin 670BA–25–101, dated December 17, 2015; or Bombardier Service Bulletin 670BA–25–101, Revision A, dated October 31, 2016, have not been done, as of the effective date of this AD: Within 6,600 flight hours or 36 months after the effective date of this AD, whichever occurs first, install protective sleeves on the bonding jumper wires of affected galleys and lavatories, in accordance with Part A through Part E, as applicable, of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–25–101, Revision B, dated January 12, 2017.

(2) For airplanes on which the actions specified in Bombardier Service Bulletin 670BA–25–101, dated December 17, 2015; or Bombardier Service Bulletin 670BA–25–101, Revision A, dated October 31, 2016, have been done, as of the effective date of this AD: Within 6,600 flight hours or 36 months after the effective date of this AD, whichever occurs first, inspect, and if required, install protective sleeves on the bonding jumper wires of affected galleys and lavatories, in accordance with Part F of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–25–101, Revision B, dated January 12, 2017.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; fax: 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.’s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2016–20R1, dated February 3, 2017, for related information. This MCAI may be found in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2017–0810.

(2) For more information about this AD, contact Assata Dessaline, Aerospace Engineer, Avionics and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7301; fax: 516–794–5531.

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Bombardier Service Bulletin 670BA–25–101, Revision B, dated January 12, 2017.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone: 1–866–538–1247 or direct-dial telephone: 1–514–855–2999; fax: 514–855–7401; email: ac.yul@aero.bombardier.com; internet: <http://www.bombardier.com>.

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference 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>.

Issued in Des Moines, Washington, on March 20, 2018.

Michael Kaszycki,
Acting Director, System Oversight Division,
Aircraft Certification Service.

[FR Doc. 2018-06712 Filed 4-6-18; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2018-0269; Product Identifier 2018-NM-051-AD; Amendment 39-19243; AD 2018-07-12]

RIN 2120-AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A350-941 airplanes. This AD requires performing repetitive station position pick-off unit (SPPU) calibration tests, and applying the corresponding airplane fault isolation if necessary. This AD was prompted by a report indicating malfunctions of the SPPU and failures of the internal wiring due to water ingress via certain electrical connectors, inducing subsequent icing during flight. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective April 24, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 24, 2018.

We must receive comments on this AD by May 24, 2018.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email continued-airworthiness.a350@airbus.com; internet <http://www.airbus.com>. You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0269.

Examining the AD Docket

You may examine the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0269; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3218.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2018-0058, dated March 14, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all Airbus Model A350-941 airplanes. The MCAI states:

Occurrences have been reported by Airbus A350 operators of malfunctions of Station Position Pick-Off Units (SPPU). Investigations indicated that internal wiring failures occurred due to water ingress via certain electrical connectors, inducing subsequent icing during flight.

This condition, if not detected and corrected, could lead to hidden sensor signal drift (at flap station 3) which, in combination with an independent failure of a flap down drive disconnect, might lead to in-flight detachment of the outer flap surface, possibly resulting in damage to the aeroplane, and/or injury to persons on the ground.

Airbus determined that the SPPU calibration test can highlight all hidden faults, but this test is only scheduled after removal/installation of the equipment. Consequently, to address this potential unsafe condition, Airbus issued the SB [Service Bulletin A350-27-P021, dated February 13, 2018], providing instructions to accomplish the SPPU calibration test at regular intervals.

For the reason described above, this [EASA] AD requires repetitive SPPU calibration test and, depending on findings, accomplishment of applicable corrective action(s) [applying corresponding airplane fault isolation].

Pending the results of the on-going investigation, this [EASA] AD is still considered to be an interim measure and further [EASA] AD action may follow.

You may examine the MCAI on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0269.

Related Service Information Under 14 CFR Part 39

Airbus has issued Service Bulletin A350-27-P021, dated February 13, 2018. The service information describes performing repetitive SPPU calibration tests, and applying the corresponding airplane fault isolation if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this