
Wednesday
April 13, 1988

14 CFR **Part 135**

Part VIII

Department of Transportation

Federal Aviation Administration
14 CFR Parts 121 and 135
Smoking Aboard Aircraft; Final Rule

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 121 and 135**

[Docket No. 25590; Amdt. Nos. 121-196 and 135-25]

Smoking Aboard Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule requires the no smoking sign to be turned on at all times on scheduled airline flights, except for flights between the United States and other countries, which are scheduled to be 2 hours or less in duration. This rule carries out a ban on smoking on such flights mandated by Pub. L. 100-202. The rule also makes minor changes in other, related sections of Parts 121 and 135 which affect smoking aboard air carrier aircraft during flights not covered by a total ban. Smoking in lavatories is prohibited on all air carrier flights. By December 31, 1988, aircraft lavatories must have placards which notify passengers that tampering with smoke detectors is prohibited by Federal law. Finally, the required passenger briefing must include more detailed instructions on smoking, including all these changes and the new statutory ban on tampering with smoke alarms in aircraft lavatories.

DATES: *Effective Date:* April 23, 1988.

Comments By: May 31, 1988.

ADDRESSES: Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25590, 800 Independence Avenue, SW., Washington, DC 20591. One may deliver comments in duplicate to FAA Rules Docket, Room 915G, 800 Independence Avenue, SW., Washington, DC. All comments must be marked "Docket No. 25590." Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT:

John Craig Weller, Operations Law Branch (AGC-220), Regulations and Enforcement Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-8756; Gary E. Davis, Project Development Branch (AFS-240), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-8094.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments and by commenting on the possible environmental, energy, federalism, or economic impact of this proposal. The comment should identify the regulatory docket or amendment number and be submitted in duplicate to the address above. All comments received, as well as a report summarizing any substantive contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection both before and after the closing date for making comments.

The Administrator will consider any comment made on or before the closing date for comments. This final rule may be amended in light of comments received.

The FAA will acknowledge receipt of a comment if the commenter submits with the comment a pre-addressed, stamped postcard on which the following statement is made: "Comment to Docket No. 25590." When the comment is received, the postcard will be dated, time stamped, and returned to the commenter.

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA-430), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Requests should be identified by the docket number of this rule. Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Smoking aboard air carrier aircraft has been regulated for some time for reasons of consumer protection, passenger comfort, and safety. Regulation of smoking for consumer protection and passenger comfort reasons has been based on the consumer protection provisions of section 404 of the Federal Aviation Act (Act) which requires air carriers to provide safe and adequate service. Section 404 is contained in Title IV of the Act, which regulates the economic and consumer protection aspects of air

transportation. The first such rules concerning smoking aboard air carrier aircraft were adopted by the Civil Aeronautics Board (CAB) in 1973 (ER-800, 38 FR 12207, May 10, 1973). Those rules required certificated air carriers to set aside nonsmoking seats on each of their flights and to offer nonsmoking seats, if available, to passengers. Subsequently, the CAB amended its smoking rules to require that all passengers who requested a nonsmoking seat be given one (as long as the passenger complied with the carrier's usual check-in requirements), even if that meant the nonsmoking section had to be expanded (ER-1245, 46 FR 45934, September 16, 1981).

In 1984, the CAB reexamined its smoking rules. It considered requiring a ban on smoking on all air carrier flights of 2 hours duration or less, but eventually decided not to adopt such a ban. It did, however, ban smoking entirely on air carrier aircraft with fewer than 30 passenger seats (except for on-demand air taxi operations) because of the less-effective cabin ventilation systems on these aircraft and because flights in these aircraft were typically of short duration. The CAB reasoned that the short duration of the flight would ensure that any burden on smokers was minimized, while providing nonsmokers with a smoke-free flight. At the same time, the CAB adopted a total ban on smoking while an aircraft was on the ground because it found that aircraft ventilation systems typically are less effective there (ER-1383, 49 FR 25408, June 20, 1984).

When the CAB ceased to exist at the end of 1984 because of airline economic deregulation, the remaining economic regulatory functions were transferred to the Office of the Secretary of Transportation (OST). The consumer protection and passenger comfort rules on smoking aboard air carrier aircraft continue to be administered by OST (14 CFR Part 252).

While OST regulates air carrier economic and consumer issues under Title IV of the Act, the Federal Aviation Administration (FAA) regulates the safety aspects of air carrier operations under the authority of Title VI of the Act. FAA rules for the operation of air carrier airplanes with more than 30 seats are contained in Part 121 of the Federal Aviation Regulations (FAR) (14 CFR Part 121). Rules for the operation of air carrier aircraft with 30 seats or less are contained in Part 135 of the FAR (14 CFR Part 135). Some additional certification rules for all air carriers are contained in Special Federal Aviation Regulation (SFAR) 38-2.

Currently, there are few FAA rules which regulate smoking on air carrier aircraft for safety reasons. Section 121.317 of the FAR requires that each airplane be equipped with no smoking signs that must be turned on for each takeoff and landing, and at any other time deemed necessary by the pilot in command. No one may smoke when these signs are turned on. As a matter of practice, most carriers turn these signs on before passenger boarding and usually leave them on until after takeoff, turn them on again when the airplane is on final approach for landing, and then leave them on until the passengers have deplaned. Section 121.571(a)(1) of the FAR also requires that passengers be briefed on smoking before takeoff.

Section 135.177(a)(3) requires that aircraft having more than 19 passenger seats be equipped with no smoking signs which must be turned on for each landing and takeoff, and any other time considered necessary by the pilot in command. There is no requirement that smaller aircraft have no smoking signs. However, § 135.117(a)(1) requires that passengers on all aircraft operated under Part 135 of the FAR be given a briefing on smoking before takeoff.

New Legislative Requirement

In December 1987, Congress enacted a number of changes to the Act. One of the actions was an amendment to section 404 of the Act which mandates a total ban on smoking "in the passenger cabin or lavatory on any scheduled airline flight in intrastate, interstate, or overseas air transportation, if such flight is scheduled for 2 hours or less in duration." (Section 404(d)(1)(A)). This ban takes effect on April 23, 1988, and lasts for a period of 2 years. Section 404(d)(1)(B) directs the Secretary of Transportation to issue any regulations necessary to carry out the ban.

At the same time, Congress also added section 404(d)(2) which provides for a civil penalty of up to \$2,000 for any passenger who tampers with, disables, or destroys a smoke detector in the lavatory of an air carrier aircraft. This provision took effect immediately and has no expiration date.

Currently, smoke detectors installed in aircraft lavatories are not required to be resistant to tampering. However, such a requirement might prevent or discourage attempts to tamper with or disable lavatory smoke detectors. The FAA solicits comments on whether it should consider such a requirement and on the associated costs and benefits.

As already mentioned, the current consumer protection rules regulating smoking on air carrier aircraft are contained in Part 252 of the economic

regulations administered by OST. These rules were adopted under the "safe and adequate service" provisions of section 404 of the Act. The new smoking ban adopted by Congress is also contained in section 404 of the Act. The Secretary of Transportation has decided that rules to carry out the new, congressionally-mandated ban on smoking aboard flights of 2 hours or less should be administered by the FAA instead of OST. This decision is based on the fact that the passenger information signs aboard aircraft, which tell passengers when they may not smoke, are required by the safety rules in the FAR. The times when these signs must be turned on are also prescribed by the FAR. Ensuring compliance with the signs is also the responsibility of the FAA. Since passengers are accustomed to these signs and to complying with them, it is logical to use them to notify passengers that smoking is prohibited on a particular flight. In addition, because the signs are already in place on most air carrier aircraft, using them to notify passengers of the smoking ban will entail no additional cost for the airlines. For aircraft which are not required to have signs, the safety briefing already required by the FAR can be used to inform passengers when the 2-hour ban will be in effect. Therefore, the Secretary has delegated the authority under section 404(d) of the Act, as amended by section 328(a) of the Department of Transportation and Related Agencies Appropriations Act of 1988, Pub. L. 100-202, to the Administrator of the FAA. (Amendment 1-223, 53 FR 10250, March 30, 1988).

Discussion of the Rule

"Scheduled Flights"

Neither Part 121 nor Part 135 contains a definition of "scheduled flight." The term "schedule operation" is defined in SFAR 38-2 (50 FR 23944, June 7, 1985) as:

Operations that are conducted in accordance with a published schedule for passenger operations which includes dates or times (or both) that is openly advertised or otherwise made readily available to the general public.

The FAA has determined that this definition of "schedule operation" should not be used to determine which flights operated by an air carrier should be included in the 2-hour smoking ban. Since the adoption of this definition in 1985, there have been complaints to the FAA and OST that it is too broad and includes flights which are legitimate "charter" flights. Many such flights are advertised in newspapers, flyers, and compilations of schedules with only dates of operation and cities served,

without specific departure and arrival times or flight numbers. Passengers who reserve seats on these flights are usually only given specific departure and arrival times shortly before the actual date of departure. The FAA has concluded that it would be impractical to apply the 2-hour smoking ban to these flights, and it also concludes that Congress did not intend for them to be included.

The Official Airline Guide (OAG) is widely regarded as an authoritative source of information on scheduled airline flights throughout the world. The FAA has determined that the North American Edition of this publication should be used to determine which flights are included in the 2-hour smoking ban. At present, the operations of all air carriers offering scheduled flights are listed in the OAG. While it is conceivable that a carrier might remove its flights from the OAG to escape the 2-hour ban, the FAA believes that competitive and marketing pressures make such defections unlikely. The FAA invites comment on this conclusion.

Duration of Covered Flights

Pub. L. 100-202 bans smoking on a scheduled airline flight that is "scheduled for 2 hours or less in duration," except a flight between a point in the United States and a foreign country. The conference report on the legislation makes it clear that Congress intended that the ban apply to a flight which is scheduled for 2 hours or less, regardless of the actual duration of the flight. Scheduled duration of a flight will be determined by the elapsed time shown in the current North American Edition of the OAG. The FAA has decided that the OAG should be used as the reference for scheduled time, instead of airline computer reservation systems (CRS) because of the much wider availability of the OAG. CRS are not directly available to the public; information they contain usually may be obtained only through an airline or a travel agency. The OAG is available at airline offices and ticket counters, and at travel agencies, but it is also available in many libraries and may be purchased from the publisher. The schedule information contained in the OAG is nearly identical to that in airline CRS, although it is not updated quite so frequently because of publishing schedules. Nevertheless, its wider availability makes it a better reference source for determining the duration of a flight and whether the flight is covered by the smoking ban. It will be readily available to passengers who want to determine if smoking will be prohibited on a particular flight and to FAA

inspectors who must verify compliance with the 2-hour ban.

For the purposes of the smoking ban, each segment of a multistop flight will be considered as a separate "flight." For example, a flight consisting of two segments—A to B with a duration of 90 minutes and B to C also with a duration of 90 minutes—would be considered two flights of less than 2 hours duration rather than one flight of 3 hours duration. Thus, smoking would be prohibited on both segments. On the other hand, on a flight consisting of two segments—A to B with a duration of 90 minutes and B to C with a duration of 3 hours—smoking would be banned only on the first segment.

Part 121

All airplanes used in operations under Part 121 of the FAR are currently required by § 121.317 to be equipped with passenger information signs which can be turned on and off by the crew. These signs tell passengers when to fasten their seat belts and when smoking is prohibited. Passengers are accustomed to these signs and to complying with their instructions. The no smoking signs are thus a good means for informing passengers when smoking is prohibited on a particular flight because it is of 2 hours duration or less. However, the FAA solicits comments on any problems this might cause and alternative means of carrying out the 2-hour ban on smoking. Section 121.317 currently requires that the no smoking sign (and the seat belt sign) be turned on for each landing and takeoff, and at any other time considered necessary by the pilot in command. This section is amended to include a new paragraph § 121.317(c)(1), which specifies that the no smoking sign must be turned on at all times during flight segments scheduled to last 2 hours or less, except for flights between the United States and a foreign point. Scheduled times will be determined by reference to the current OAG. Section 121.317(i) provides that this requirement will cease to be effective on April 24, 1990, since the statutory 2-hour ban expires on that date. New paragraph § 121.317(c)(2), which applies to all flights not included in the total ban on smoking, continues the current requirements for when the no smoking light must be turned on.

Currently, § 121.317(c) prohibits smoking whenever the no smoking light is turned on. This requirement is moved to a new paragraph § 121.317(g). This paragraph includes an exception which will allow the pilot in command to permit smoking in the cockpit even when the no smoking sign is necessary because the 2-hour ban applies only to

the passenger cabin and lavatory. Smoking in the lavatory is prohibited at all times by new paragraph § 121.317(h). This added language clarifies the existing requirement that lavatories be equipped with placards prohibiting smoking and carries out the new statutory ban on smoking in lavatories.

In addition, new § 121.317(e) requires that each airplane lavatory have a sign or placard which reads: "Federal law provides for a penalty of up to \$2,000 for tampering with the smoke detector installed in this lavatory." These notices, which must be in place by December 31, 1988, will help to notify passengers about the new civil penalty provision of the Act applicable to persons who tamper with lavatory smoke detectors. They will supplement the briefing that passengers receive on this provision of the Act.

The existing provisions of § 121.317 are rearranged and some editorial changes are made for clarity. An obsolete compliance date is removed.

Section 121.571(a)(1)(i) is revised to expand the required passenger briefing on smoking. The briefing must include the pertinent requirements of the FAR and of Part 252 of the economic regulations. Most carriers now include the applicable requirements of both in their briefings. The required briefing must also include a specific statement advising passengers that the FAR require compliance with no smoking signs and placards, and that the Act bans tampering with smoke alarms in lavatories. Of course, carriers are free to include more information if they desire. For example, during the briefing on a flight segment of less than 2 hours, a carrier might choose to include information on smoking on a subsequent segment which is longer than 2 hours.

Part 135

In contrast to airplanes operated under Part 121, not all aircraft operated under Part 135 are required to have passenger information signs. Section 135.177(a)(3) requires such signs only on aircraft with more than 19 passenger seats. For those aircraft, a new § 135.127 is added with requirements similar to those in Part 121. No smoking signs will have to be turned on at all times on scheduled flight segments of 2 hours or less, as shown in the current OAG. As in Part 121, this provision will expire on April 24, 1990. For other flights, the current requirement in § 135.177(a)(3) that no smoking signs be turned on for takeoff and landing, and at any other time considered necessary by the pilot in command is moved to a new § 135.127(a)(2). New § 135.127(b) prohibits smoking while the no smoking

sign is turned on, although it also includes an exception that allows smoking in the cockpit at the discretion of the pilot in command, provided the cockpit is physically separated from the passenger cabin. This means that the cockpit must be separated from the passenger cabin by a solid bulkhead, or a similar barrier, with a door that may be closed during flight. Smoking may only be permitted in the cockpit when this door is closed. Section 135.127(c) prohibits smoking in lavatories on aircraft and § 135.127(d) requires placards or signs like those required by § 121.317(e) to be installed by December 31, 1988, in aircraft lavatories equipped with smoke detectors.

Section 135.117(a)(1) concerning the required passenger briefing on smoking is amended to be substantially identical to the briefing requirement in Part 121. This briefing will serve to inform passengers on aircraft with 19 or fewer seats, which are not required to have passenger information signs, of the statutory smoking ban as well as carrier rules prohibiting smoking adopted under Part 252 of OST's rules. In fact, the new ban should have little impact on passengers on most scheduled flights operated under Part 135 because carriers, other than air taxi operators, are already required by § 252.3 of OST's economic regulations to prohibit smoking on aircraft with fewer than 30 passenger seats.

Compliance

Under the current smoking regulations administered by OST, air carriers (excepts for air taxi operators) are required to adopt and enforce various rules concerning smoking. Passengers are not subject to penalties for failure to comply with these carrier rules concerning smoking, although carriers are subject to civil penalties for failure to enforce their rules. In contrast, passengers who fail to observe the new 2-hour smoking ban may be subject to a civil penalty for smoking while the no smoking sign is lighted. Carriers will remain subject to the duty to enforce their rules on smoking imposed by Part 252 of OST's rules. In addition, the FAA also expects carriers to diligently enforce the prohibition on smoking when the no smoking light is turned on. If they do not, the FAA will consider further rulemaking on this issue. Of course, carriers remain free to adopt more stringent rules on smoking than prescribed by the FAR (or Part 252), including a total ban on all smoking on all flights. Alternatively, a carrier might choose to ban smoking on all flights in selected markets. Such a ban might help

eliminate confusion in markets where some flights were scheduled for just under 2 hours in duration and others were scheduled to be slightly more than 2 hours in duration because of adverse wind conditions, for example.

Analysis of Benefits and Costs

The FAA has estimated the costs and benefits associated with this rule by analyzing it section-by-section.

This rule incorporates the provisions which carry out Pub. L. 100-202 into the FAR and, as such, is incorporated into the Code of Federal Regulations at 14 CFR Part 121 and Part 135. The FAA's responsibility in this regard has been to devise and promulgate a set of procedures to carry out the statutory mandate that bans smoking in the passenger cabin or lavatory on any scheduled airline flight in intrastate, interstate, or overseas air transportation, if such flight is scheduled for 2 hours or less in duration. The FAA is similarly responsible with regard to the Act's new civil penalty provision which is applicable to persons who tamper with lavatory smoke detectors. The rule also adopts, in other related sections of Part 121 and 135, clarifying changes which embody current industry practice regarding smoking aboard air carrier aircraft during flight not covered by the total ban.

This rule provides a set of procedures to carry out the statutory mandate of Pub. L. 100-202, and incorporates changes that clarify current industry-wide requirements regarding smoking aboard aircraft. The costs of these procedures have been kept to a minimum, negligible amount because the FAA has employed a set of procedures that uses the duration of time the no smoking sign is lighted, the currently required safety briefing, and a simple sign or placard as the principal devices for carrying out the statutory mandate. The total cost of these requirements is negligible—the most expensive component cost being approximately one dollar to install a simple sign in a lavatory that has a smoke detector. The benefit of this rule is that the procedures give passengers an awareness of the provisions of the law regarding smoking aboard aircraft. Since passenger compliance with the law is contingent upon an awareness of the law, these procedures may be expected to increase passenger acceptance of constraints on smoking by providing timely and adequate information, thus reducing potential confusion and hostility which, in some cases, could have safety implications. This intangible benefit is not quantifiable in monetary terms.

Each change in Parts 121 and 135 is identified and explained in the detailed section by section analysis contained in the full Regulatory Evaluation placed in the Docket.

Regulatory Flexibility Determination

Since there is little or no cost associated with this rule, the FAA has determined that the rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Statement

Since this rule affects only U.S. air carriers which conduct scheduled flights of 2 hours or less in duration in intrastate, interstate, or overseas air transportation, and otherwise embodies current industry practice regarding smoking aboard aircraft, the FAA has determined that these regulations will not have an impact on international trade.

Need for Immediate Adoption

The majority of the changes made in this amendment merely carry out the prohibition on smoking on scheduled airline flights of 2 hours or less that was enacted by Congress. The change which prohibits smoking in lavatories on aircraft is partly in response to this same legislative action and in part is merely clarifying because lavatories are already placarded to prohibit smoking. The requirement for signs or placards in lavatories also carries out the new statutory ban on tampering with lavatory smoke detectors. Similarly, the expanded smoking briefing requirement is merely clarifying in nature, and largely reflects what is already the practice of most certificate holders.

Therefore, public comment on this amendment before its adoption is not likely to be helpful and could delay the effectiveness of the amendment past the effective date of the statutory ban on smoking. Such a delay is likely to cause confusion and would not be in the public interest. Comments received after the adoption of the amendment will be fully considered and any required changes in the rule will be made. For the same reasons, the FAA also finds good cause for making this amendment effective less than 30 days after publication.

Conclusion

The FAA has determined that this amendment is not major under Executive Order 12291 and that it is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). For the reasons discussed above, it also has been determined that the rule will not have a significant economic

impact on a substantial number of small entities. A copy of the full Regulatory Evaluation is filed in the docket.

The regulation set forth in this amendment is being adopted pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*). That statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that this amendment does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Parts 121 and 135

Air carriers, Air taxis, Aircraft, Airmen, Airplanes, Air transportation, Aviation safety, Airworthiness directives and standards, Charter flights, Common carriers, Crashworthiness, Emergency evacuation, Reporting and recordkeeping requirements, Smoking, Transportation.

PART 121—CERTIFICATION AND OPERATIONS DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS, AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 is amended to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1374(d) (as amended by Pub. L. 100-202), 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

2. Section 121.317 is amended by revising paragraph (a), revising paragraph (b) and redesignating it as (d), revising paragraph (c) and redesignating it as (f), and adding new paragraphs (b), (c), (e), (g), (h), and (i) to read as follows:

§ 121.317 Passenger information.

(a) No person may operate an airplane unless it is equipped with passenger information signs that meet the requirements of § 25.791 of this chapter. The signs must be constructed so that the crewmembers can turn them on and off.

(b) The seat belt sign shall be turned on for each landing and takeoff, and at any other time considered necessary by the pilot in command.

(c) The no smoking sign shall be turned on:

(1) During flight time on flight segments which are scheduled in the current North American Edition of the Official Airline Guide to be 2 hours or less in duration, except those flight segments between a point in the United States and a point in another country, or

(2) On flight segments other than those described in paragraph (c)(1) of this section, for each takeoff and landing, and at any other time considered necessary by the pilot in command.

(d) No person may operate a passenger-carrying airplane unless there is affixed to each forward bulkhead and each passenger seat back a sign or placard that reads "Fasten Belt While Seated." These signs or placards need not meet the requirements of paragraph (a) of this section.

(e) After December 31, 1988, no person may operate an airplane unless there is installed in each lavatory a sign or placard that reads: "Federal law provides for a penalty of up to \$2,000 for tampering with the smoke detector installed in this lavatory." These signs or placards need not meet the requirements of paragraph (a) of this section.

(f) Each passenger shall fasten that passenger's seat belt and keep it fastened while the seat belt sign is lighted.

(g) No person may smoke while a no smoking sign is lighted, except that the pilot in command may authorize smoking on the flight deck except during landings and takeoffs.

(h) No person may smoke in any airplane lavatory.

(i) The provisions of paragraph (c)(1) of this section shall cease to be effective on April 24, 1990.

3. Section 121.571 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 121.571 Briefing passengers before takeoff.

(a) * * *

(1) * * *

(i) *Smoking.* Each passenger shall be briefed on when, where, and under what conditions smoking is prohibited (including, but not limited to, the pertinent requirements of Part 252 of this title). This briefing shall include a statement that the Federal Aviation Regulations require passenger compliance with the lighted passenger

information signs and posted placards. The briefing shall also include a statement that Federal law prohibits tampering with, disabling, or destroying any smoke detector in an airplane lavatory.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

4. The authority citation for Part 135 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1374(d), (as amended by Pub. L. 100-202), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

5. Section 135.117 is amended by revising paragraph (a)(1) to read as follows:

§ 135.117 Briefing of passengers before flight.

(a) * * *

(1) *Smoking.* Each passenger shall be briefed on when, where, and under what conditions smoking is prohibited (including, but not limited to, the pertinent requirements of Part 252 of this title). This briefing shall include a statement that the Federal Aviation Regulations require passenger compliance with the lighted passenger information signs (if such signs are required) and posted placards. The briefing shall also include a statement (if the aircraft is equipped with a lavatory) that Federal law prohibits tampering with, disabling, or destroying any smoke detector installed in an aircraft lavatory.

6. A new § 135.127 is added to read as follows:

§ 135.127 Passenger information.

(a) The no smoking signs required by § 135.177(a)(3) of this part must be turned on:

(1) During flight time on flight segments which are scheduled in the current North American Edition of the Official Airline Guide to be 2 hours or less in duration, except those flight segments between a point in the United States and a point in another country; or

(2) On flight segments other than those described in paragraph (a)(1) of this section, for each takeoff and landing, and at any other time considered necessary by the pilot in command.

(b) No person may smoke while a no smoking sign is lighted, except that the pilot in command may authorize smoking on the flight deck (if it is physically separated from the passenger cabin) except during takeoff and landing.

(c) No person may smoke in any aircraft lavatory.

(d) After December 31, 1988, no person may operate an aircraft with a lavatory equipped with a smoke detector unless there is in that lavatory a sign or placard which reads: "Federal law provides for a penalty of up to \$2,000 for tampering with the smoke detector installed in this lavatory."

(e) The provisions of paragraph (a)(1) of this section shall cease to be effective on April 24, 1990.

7. Section 135.177(a)(3) is revised to read as follows:

§ 135.177 Emergency equipment requirements for aircraft having a passenger seating configuration of more than 19 passengers.

(a) * * *

(3) Signs that are visible to all occupants to notify them when smoking is prohibited and when safety belts should be fastened. The signs must be constructed so that they can be turned on and off by a crewmember. Seat belt signs must be turned on for each takeoff and landing, and at other times considered necessary by the pilot in command. No smoking signs shall be turned on when required by § 135.127 of this part.

Issued in Washington, DC, on April 11, 1988.

T. Allan McArtor,
Administrator.

[FR Doc. 88-8204 Filed 4-11-88; 4:04 pm]

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Corrections

Federal Register

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 25590; Amdt. Nos. 121-196 and 135-25]

Smoking Aboard Aircraft

Correction

In rule document 88-8204 beginning on page 12358 in the issue of Wednesday, April 13, 1988, make the following corrections:

1. On page 12360, in the first column, the second line from the bottom of the page should read "when the no smoking sign is lighted, except during landing and takeoff. An exception is necessary".
2. On page 12361, in the first column, in the second complete paragraph, in the 15th line, "responsible" was misspelled.

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Friday
May 26, 1989

Federal Register

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 135

Smoking Aboard Aircraft; Summary and
Disposition of Comments; Rule

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 121 and 135**

[Docket No. 25590; Amdt. Nos. 121-196 and 135-25]

Smoking Aboard Aircraft; Summary and Disposition of Comments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments.

SUMMARY: This document summarizes and responds to comments received by the FAA concerning the Smoking Aboard Aircraft Final Rule. Due to a congressional mandate, the rule went into effect on April 23, 1988. Because of the early effective date, the FAA did not have sufficient time to issue a notice of proposed rulemaking and receive comments from the public. Therefore, post-effective date comments were invited from the public. The comment period closed on May 31, 1988; however, this document addresses comments received through December 31, 1988.

DATE: Effective Date of Final Rule: April 23, 1988.

ADDRESSES: The Smoking Aboard Aircraft Final Rule docket may be examined at the Federal Aviation Administration, Office of the Chief Counsel, Rules Docket, Room 915-G, 800 Independence Avenue SW., Washington, DC 20591. The Rules Docket is open weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gary E. Davis, Project Development Branch (AFS-240), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267-8096.

SUPPLEMENTARY INFORMATION:**Background**

In 1984 Congress directed the Secretary of Transportation to commission an independent study by the National Academy of Sciences (NAS) on the cabin air quality in airliners. NAS formed the Committee on Airliner Cabin Air Quality (Committee), and the study was published in August 1986. The Committee presented 21 recommendations, the most controversial of which was to ban smoking on all commercial domestic flights.

In December 1987, Congress enacted an amendment to section 404 of the

Federal Aviation Act of 1958 (Act). The amendment [section 404(d)(1)(A)] (smoking ban or ban) banned smoking in the passenger cabin or lavatory aboard domestic flights scheduled for 2 hours or less. Congress required that the ban go into effect on April 23, 1988, and last for a period of 2 years.

Congress also added section 404(d)(2) to the Act which provides for a civil penalty of up to \$2,000 for any passenger who tampers with, disables, or destroys a smoke detector in the lavatory of an aircraft. The civil penalty provision took effect immediately and has no expiration date. Congress directed the Secretary of Transportation (Secretary) to issue the implementing regulations. The Secretary has delegated this responsibility to the FAA (Amendment 1-223, 53 FR 10250, March 30, 1988).

The FAA issued the Smoking Aboard Aircraft Final Rule on April 11, 1988 and published it in the *Federal Register* on April 13, 1988 (52 FR 12358). Because Congress required that the smoking ban go into effect on April 23, 1988, the FAA rule became effective on the same date. Post-effective date comments were invited from the public.

The Department of Transportation (DOT) compiled the public comments in response to both the NAS Committee on Airliner Cabin Air Quality recommendations and the FAA rule. With respect to the former—from the date of publication of the Committee's recommendations through December 31, 1988—DOT's Consumer Affairs Office received 3,181 unsolicited letters concerning the Committee's recommendation to ban smoking aboard aircraft, of which 2,871 supported the NAS recommendation. The FAA has been advised by the Office of the Secretary of Transportation that one of the letters supporting the Committee's recommendation to ban smoking aboard aircraft was signed by more than 6,100 people. The remaining 310 letters received opposed the Committee's recommendation to ban smoking and smoking regulations in general.

With respect to the FAA rule—from the date of publication of the rule through December 31, 1988—DOT's Consumer Affairs Office received 6,068 letters and postcards. Seventy-seven comments were in favor of the ban; the balance, most of which were form letters and postcards, opposed the smoking ban. The letters and cards received by DOT since June 8, 1988, are available for review in the Rules Docket.

Discussion of the Comments

Comments on the final rule were invited to be submitted between April 23, 1988, and May 31, 1988. The FAA has

reviewed all of the comments received up to December 31, 1988. The comments and the FAA's disposition of the comments are discussed below.

The FAA received 122 comments; 79 supporting the rule, 36 opposing the rule, and 7 neutral. Ninety-three comments received were from private citizens. Twenty-one comments were received from medical and health organizations. The remaining 8 comments received were from airline industry and union organizations, a consumer action group, one air carrier, and a representative of the tobacco industry.

The private citizen commenters opposed to the rule recommended that the FAA repeal the ban. Because the smoking ban was congressionally mandated, only Congress can repeal the smoking ban.

The private citizen commenters supporting the rule and the comments received from the medical and health organizations recommended that the FAA extend the smoking ban to include flights longer than 2 hours and to extend the ban beyond the April 1990 expiration date.

At this time, scientific evidence has not sufficiently established that there is a significant health risk to nonsmoking passengers and crewmembers, while on board an aircraft, when other passengers are smoking and the existing smoking regulations are enforced. DOT is conducting a study to identify the type and level of contaminants created by smoking aboard aircraft and the health risks such contaminants may pose to nonsmoking passengers. With the information provided from the DOT study, and upon consideration of reports and studies from other governmental agencies and scientific and medical groups, options for mitigating the exposure to smoking contaminants aboard aircraft will be evaluated. Further rulemaking at this time is premature.

The scope and duration of the present smoking ban regulations promulgated by the FAA were intended solely to implement the congressional mandate to ban smoking aboard aircraft. Therefore, recommendations to extend the smoking ban in duration or to expand the scope of the ban to flights longer than 2 hours are beyond the scope of this rulemaking. Recommendations for changes to the congressional mandate that bans smoking should be directed to the Congress. Legislation was introduced in the last Congress and at least one bill has been introduced already in the 101st Congress to permanently prohibit smoking on all domestic airline flights.

The remaining 8 comments are discussed below. These commenters addressed the FAA's decision to apply the smoking ban to each flight segment of 2 hours or less during a multistop flight, use of the North American Edition of the Official Airline Guide (OAG) to determine which flights will be covered by the smoking ban, realistic scheduling, compliance and enforcement issues, tampering with smoke detectors, and the requirement to keep the passenger information signs lit during flights of 2 hours or less.

Flights Covered by the Smoking Ban

Flight Segments

One commenter stated that the FAA's determination to apply the smoking ban to each flight segment of 2 hours or less during a multistop flight ignores what the commenter believes is the intent of Congress to strike a balance between the needs of smokers and nonsmokers aboard aircraft. By applying the smoking ban to each flight segment of 2 hours or less, a passenger who is on board an aircraft that makes several stops before arriving at its final destination will be prevented from smoking for the entire length of the trip if each flight segment of the trip is 2 hours or less. The commenter recommended, for the purpose of applying the smoking ban, that a multistop flight be considered one flight, rather than considering each flight segment of a multistop flight as a separate flight.

Congress made no apparent distinction between flights of 2 hours or less and flights that are segments of multiple-flight itineraries (flight segments). Such flight segments are listed individually in schedules as nonstop flights and, for many passengers, a nonstop flight segment is an entire flight. The FAA determined that Congress intended to provide passengers on nonstop flights of 2 hours or less a smoke-free flight, even if that flight may continue after landing to another destination.

Use of the Official Airline Guide

Another commenter stated that the FAA's determination to apply the smoking ban to each flight of 2 hours or less listed in the OAG is too narrow. The commenter recommends that the smoking ban apply to all flights of 2 hours or less, including charter flights which are not listed in the OAG. The commenter raised two concerns: (1) many flights, although not scheduled, are 2 hours or less and passengers aboard such flights should benefit from the smoking ban; and (2) air carriers may stop publishing their flights in the

OAG and thereby avoid compliance with the smoking ban.

Charter flights are not scheduled flights. Because the congressional mandate requires that the smoking ban be applied to scheduled flights, nonscheduled flights of 2 hours or less are unaffected. Therefore, applying the ban to charter flights is beyond the scope of this rulemaking.

While, hypothetically, an air carrier might remove a flight listing from the OAG to avoid complying with the smoking ban, the FAA concluded, as noted in the preamble to the rule, that competitive and marketing pressures would discourage this action. The FAA invited comments on its conclusion (52 FR 12359; April 13, 1988). No comment or complaint has been received regarding the removal of a flight listed in the OAG.

One commenter suggested that the air carriers be allowed to use sources other than the OAG to determine scheduled flight times. The computer reservation system was recommended as one alternative to the OAG. The FAA determined that passengers, air carriers, and FAA inspectors should use the same resource to determine which flights are subject to the smoking ban. Thus, a comprehensive and accessible list of scheduled flights must be available. The OAG is such a list. It contains the operations of all major air carriers offering scheduled flights. Any such flights that are not listed in the OAG would almost certainly be utilizing aircraft with less than 30 seats where smoking is totally banned already. (14 CFR 252.5) In addition, the flight information in the OAG is readily available to passengers who want to determine whether smoking will be prohibited on a particular flight. Thus, because of its accessibility and widespread use and acceptance, the FAA continues to believe that the OAG is the best means for determining which scheduled flights are covered by the smoking ban.

Realistic Scheduling

Congress required that the smoking ban apply to flights scheduled for 2 hours or less, notwithstanding the actual duration of the flight. One commenter stated that many flights scheduled for 2 hours or less take longer and that passengers on such flights will be required to refrain from smoking for a longer period of time than intended by Congress. To prevent the ban from applying to scheduled flights that are likely to exceed 2 hours, the commenter suggested that the FAA require the airlines to adjust their schedules, as

reported in the OAG, by incorporating an average delay factor that would ensure accurate listings.

This comment should be addressed as a scheduling issue which is more appropriately within the regulatory jurisdiction of the Office of the Secretary of Transportation (OST). OST rules already regulate "unrealistic scheduling," which is defined as a prohibited unfair or deceptive practice (14 CFR 399.81(a)). Persons with evidence of unrealistic scheduling by a particular air carrier should provide it to OST. OST rules also require air carriers to report their on-time performance to OST and to include an on-time performance code for each flight in their computerized reservation systems (14 CFR 234.4). Thus, a regulatory deterrent to unrealistic scheduling is already in place.

Compliance and Enforcement

The preamble to the final rule states that the FAA expects air carriers to enforce the prohibition on smoking (52 FR 12360; April 13, 1988). One commenter requested that the FAA clarify the statement made in the preamble concerning this duty of the air carrier.

The FAA expects air carriers to make reasonable efforts to assist in the enforcement of the rule implementing the smoking ban. There is no indication that air carriers are not making such efforts or that air carriers do not understand how to do so.

Two commenters suggested that the FAA amend the rule to include provisions that the air carriers take such steps as are necessary to obtain a positive identification of the violator including, if necessary, the notification of police authorities at the airport who can meet the passenger and request identification. One of these commenters also suggested that the regulations require air carriers to report violations to the FAA within 48 hours of being informed that the violation occurred and that the FAA notify the alleged violator within 7 days of notification from the air carrier. The commenter is concerned that many violations may go unreported if such provisions are not included in the regulations.

The FAA expects smoking ban enforcement to be similar to enforcement of any other Federal Aviation Regulation (FAR). If a passenger violates the smoking ban, the air carrier should submit the appropriate information to the local FAA Flight Standards District Office (FSDO) so that the FAA can investigate the violation. The FAA does not believe that

enforcement of the smoking ban requires the presence of a local enforcement officer or FAA representative at the gate to immediately initiate enforcement actions. However, if a passenger who is violating the smoking ban interferes with a crewmember while the crewmember is performing his or her duties, a pilot in command may request the presence of a law enforcement officer at the gate.

Limiting the time period for a person to report a violation may actually decrease the number of violations reported to the FAA. Air carriers would not report violations if they could not submit the information within the 48-hour time limitation. The FAA prefers to have as many violations reported as possible despite the amount of time the air carrier needs to submit the information. Similarly, after an air carrier reports a violation, FAA personnel must determine whether the violation can be pursued. To make this determination, FAA personnel must obtain the crewmembers' statements. Obtaining these statements often requires more than 7 days; however, it is not until these steps are taken, that the alleged violator is notified. Therefore, the FAA has determined that time limitations on the air carriers would decrease the number of violations reported and, a requirement that the FAA notify an alleged violator within 7 days would not provide the FAA with sufficient time to open an investigation.

Tampering and Disabling Smoke Detectors

Several comments addressed the rule's provisions governing smoke detectors in aircraft lavatories. One commenter suggested that, as of January 1, 1989, the statement that tampering with smoke detectors is prohibited should be eliminated from the pre-flight briefing because, on January 1, 1989, § 121.317(e) of the FAR will require a placard in all aircraft lavatories stating this same information. Although the placards will be legible to most passengers using the lavatory, there may be some passengers who cannot or may not see or read the sign. In the interest of safety and because a violation may subject a passenger to a civil penalty of up to \$2,000, the FAA has determined that an audible, as well as a visual warning is appropriate. By including the statement in the briefing, all passengers will receive notice of the potential penalty for tampering with smoke detectors.

Considering the possibility that the 2-hour smoking ban might increase surreptitious smoking aboard aircraft,

the FAA sought comments on the need for tamper-resistant smoke detectors (52 FR 12359; April 13, 1988). Several commenters stated that passengers who insist on smoking can easily disable the smoke detectors. Some commenters suggested that the FAA require "tamper-resistant" smoke detectors and others suggested "tamper-proof" detectors. The commenters recommended a variety of approaches, such as: installing the smoke detectors behind the ceiling panel, development of a technical standard order which would require that an audible and/or visual signal be provided to the flight or cabin crewmembers when tampering occurs, and requirements that smoke detectors be upgraded so that they are as sensitive as the existing technology will permit. In addition to soliciting comments, the FAA contacted local FAA inspectors to determine whether passengers are tampering with smoke detectors. The information received from our requests for comments and from the local FAA maintenance inspectors indicates that there has been some tampering with smoke detectors.

During a House Appropriations Committee hearing on February 24, 1988, Representative Richard Durbin recommended that the FAA require air carriers to install placards stating "Federal law provides for a penalty of up to \$2,000 for tampering with the smoke detector installed in this lavatory" in every lavatory equipped with a smoke detector. The recommendation was accepted, and the rule requires that these placards be installed before January 1, 1989. The FAA believes that these placards will help deter passengers from tampering with the smoke detectors. In addition, the FAA will issue an Action Notice to all Principal Maintenance Inspectors requiring the inspectors to conduct a survey and to report the results of the survey to the Flight Standards division within 30 days. The action notice will help obtain the information necessary to determine whether or not further rulemaking is necessary and if so, what action should be taken to prevent tampering with smoke detectors.

Passenger Information Signs

In addition to the passenger briefings, the FAA chose to inform passengers of the no smoking requirement on flights of 2 hours or less by keeping the passenger information signs lit during the flight. This method was chosen for the following reasons: (1) all airplanes used in operations under Part 121 of the FAR and all airplanes with more than 19 passenger seats used in operations

under Part 135 of the FAR must be equipped with these signs; (2) such signs have always been used to inform passengers when smoking is not allowed; and (3) passengers are accustomed to such signs. However, in the preamble to the final rule, the FAA solicited comments on whether the use of these signs is the best means of notification and whether any alternative means would be better (52 FR 12359; April 13, 1988). The FAA received one comment on this issue.

The commenter stated that the passenger information signs were not designed for continuous operation. The commenter recommended that the rule allow air carriers to choose between keeping the passenger information signs lit or posting "no smoking" signs in designated areas of the passenger cabin.

The FAA finds that the alternative presented by the commenter would not be an effective way to carry out the ban. Passenger information signs are positioned so that every passenger can see a sign while seated. A passenger's field of vision is limited while seated in an aircraft and posted signs may not always be visible. Therefore, posted no smoking signs might not provide sufficient notice of the smoking ban to all passengers. Furthermore, it is important that the air carriers notify passengers of the smoking ban in a consistent manner. Uniformity of notification will reduce confusion concerning whether the ban applies to a particular flight.

Continuous use of the passenger information signs will not deteriorate the signs. Although the air carrier may need to replace the light bulbs used in the signs more frequently, this should not cause a substantial inconvenience. The bulbs used in the passenger information signs have a useful life of approximately 7,000 hours. In addition, the signs are installed with two bulbs so that the signs dim somewhat before both bulbs burn out. This gives the air carrier sufficient time to change the bulbs before the sign is inoperable. Because no effective alternative to the passenger information signs has been presented, and because use of the passenger information signs create no appreciable additional burden on the air carrier, the FAA will continue to require that the passenger information signs be used to inform passengers that a flight is a nonsmoking flight.

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Acting Director, Flight Standards Service.
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