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Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 135
Air Tour Operators in the State of Hawaii; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. 27919; Special Federal Aviation Regulation (SFAR 71)

RIN 2120–AG44

Air Tour Operators in the State of Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: On October 23, 1997, the FAA extended Special Federal Aviation Regulation (SFAR) 71, which established certain procedural, operational, and equipment requirements for air tour operators in the State of Hawaii, for 3 years. The purpose of this extension was to provide additional time for the agency to complete and issue a notice of proposed rulemaking that would apply to all air tour operators. The FAA anticipates that this national rule, when finalized, would replace SFAR 71, which would then be rescinded. The FAA proposes to extend SFAR 71 for another 3 years, which would provide the additional time necessary to issue the proposal addressing commercial air tour safety standards and maintain the current regulatory requirements for the safe operation of air tours in the airspace over the State of Hawaii.

DATES: Send your comments on or before September 22, 2000.

ADDRESSES: Address your comments, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 27919, 800 Independence Ave., SW, Washington, DC 20591.

Comments may also be sent electronically to the Rules Docket by using the following Internet address: 9-NPRM-CMTS@mail.faa.gov. Comments must be marked as Docket No. 27919. Comments may be examined in Room 915G on weekdays between 9:00 a.m. and 5:00 p.m. except on federal holidays.

FOR FURTHER INFORMATION CONTACT: For a copy of this rule, contact the Office of Rulemaking at (202) 267–9677. For technical questions, contact Gary Davis, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; Telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comments closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. 27919." The postcard will be date stamped and mailed to the commenter.

Availability of the Proposed Rule

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339).

Internet users may reach the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm/.htm* or the GPO's web page at *http://www.access.gpo.gov/nara* to access recently published documents.

Any person may obtain a copy of this interim rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–9677. Requests should be identified by the docket number of this proposal.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to comply with small requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official.

Internet users can find additional information on SBREFA on the FAA's web page at http://www.faa.gov/avr/arm/sbrefa.htm.

Background

Since 1980, the air tour industry in the State of Hawaii has grown rapidly, particularly on the islands of Oahu, Kauai, Mauai, and Hawaii. The growth of the tourist industry, the beauty of the islands, and the inaccessibility of some areas on the islands generated significant growth in the number of air tour flights. In 1982, there were approximately 63,000 helicopter and 11,000 airplane tour flights. By 1991, these numbers had increased to approximately 101,000 for helicopters and 18,000 for airplanes.

The growth of the air tour sightseeing industry in Hawaii has been associated with an escalation of accidents. During the 9 years between 1982 and 1991, there were 11 air tour accidents with 24 fatalities. The accident data shows an escalation of accidents in the 3-year period between 1991 and 1994, during which time there were 20 air tour accidents with 24 fatalities. The apparent causes of the accidents ranged from engine power loss to encounters with adverse weather. Contributing factors to the causes and seriousness of accidents were: operation beyond the demonstrated performance envelope of the aircraft, inadequate preflight planning for weather and routes, lack of survival equipment, and flying at low altitudes (which does not allow time for recovery or forced landing preparation in the event of a power failure). Despite voluntary measures taken by some Hawaii air tour operators and an increase in FAA's inspections, a rise in the number of accidents occurred, indicating a need for additional measures to ensure safe air tour operations in Hawaii.

On September 26, 1994, the FAA published the emergency final rule, SFAR No. 71 (59 FR 49138). This action was taken because of the increase in the number of fatal accidents involving air tour aircraft during the period 1991–1994 and the causes of those accidents. The emergency regulatory action established additional operating

procedures, including minimum safe altitudes (and associated increases in visual flight rules (VFR) weather minimums), minimum equipment requirements, and operational limitations for air tour aircraft in the state of Hawaii. On October 30, 1997, SFAR 71 was extended until October 26, 2000.

Since the FAA believes that SFAR 71 has been successful in preventing further accidents, the FAA is developing a national air tour safety rule that would address similar issues identified in SFAR 71. Once that rulemaking is complete, this national rule would replace SFAR 71, which would then be rescinded.

This proposal would extend SFAR 71 for an additional 3 years. As stated in the extension of SFAR 71, the FAA intends to issue a notice of proposed rulemaking applicable to all air tour operators concerning air tour safety. This national rule will be responsive to NTSB comments and will consider issues raised by commenters who responded to SFAR 71 in 1994.

Environmental Review

Because this proposal would maintain the current conditions, no further environmental review is required.

Regulatory Evaluation Summary

SFAR 71 established certain procedural, operational, and equipment requirements for air tour operators operating in the State of Hawaii. Compliance with SFAR 71 was estimated to increase total costs approximately $2.1 million, in 1994 dollars, over the three year period, 1994 to 1997. Most of the increase in costs was associated with lost revenue that resulted from tour cancellations when the new minimum flight altitudes could not be achieved. Based on data identified during the promulgation of SFAR 71, the FAA estimated that the cost associated with revenue loss totaled approximately $1.9 million. Additional costs associated with SFAR 71 included $201,000 to provide life vests on subject helicopters and $10,000 for the development of a helicopter performance plan. The estimated potential safety benefits associated with SFAR 71 totaled approximately $33.7 million over three years. A copy of the Final Regulatory Evaluation, Final Regulatory Flexibility Determination, and Trade Impact Assessment completed for the original SFAR was placed in the docket.

Because this notice proposes to extend SFAR 71, there is no additional cost associated with it. The FAA believes that the extension of SFAR 71 would continue to prevent accidents and provide additional benefits.

This regulation is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because it was issued originally as an emergency final rule.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their action. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA's original regulatory flexibility analysis indicated that SFAR 71 would impose a "significant economic impact on a substantial number of small entities." (See the copy of the original Regulatory Flexibility Determination included in the docket.)

Although the FAA has issued a number of "deviations" since the issuance of the SFAR, the overall impact on small entities remains significant. Although this proposal only would extend the current rule, the effect of the extension of SFAR 71 is still significant for small entities. Accordingly, the FAA certifies that this extension has a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or to diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this proposed rule and has determined that it would have only a domestic impact and therefore no effect on any trade-sensitivity activity.

Paperwork Reduction Act

SFAR 71 contains information collection requirements, specifically in Section 6, Minimum flight altitudes, and Section 7, Passenger briefing. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted these requirements to OMB. As a result, an emergency clearance of the information collection requirement (No. 2120–0620) has been approved.

The original accounting for the paperwork burden was as follows. SFAR 71, effective on October 26, 1994, applies to air tour operators in the state of Hawaii. Under the SFAR, both Part 91 and Part 135 operators are required to provide a passenger safety briefing on water ditching procedures, use of required flotation equipment, and emergency egress from the aircraft in event of a water landing. The FAA estimates that 100,000 air tour operations are conducted annually by 35 operators, that each safety briefing takes 3–4 minutes, and that the cost of the briefing is $10.00 an hour. Using these numbers, 400,000 minutes = 6,667 hours × $10.00 equals $66,667.00, or approximately $.70 per flight.

To account for the deviation information collection requirement, two calculations must be performed. First, operators requested deviations to 1,000 feet, and second to 500 feet. The FAA granted 1,000 ft. deviations to approximately 35 operators. It is estimated that the preparation of a deviation request took each operator 2 hours at $15.00 an hour for a total of approximately $1,050.00. The cost for the government to review the deviations is estimated to be 1 hour of review and

operations preparation using 35 hours of inspector time or approximately $1,750.00 in costs. The 500 feet deviation requests cost the operators 35 × 1 hour at $15.00 per hour or $525.00. Cost of an inspector's review is estimated at 35 × ½ hour or $875.00. In addition, it is necessary to include the costs for FAA inspectors checking pilots on specific sites for the 500 feet deviation, and the cost for operators' check pilots to check line pilots. The former is estimated to be 35 × 3 hours at an operator/aircraft cost of $250.00 or $26,250.00. The cost to check line pilots is estimated to be 100 × 1 hour × $250.00 or $25,000.00. The cost to the government (inspectors' time) for all deviations is estimated to be 35 × 3 hours × $50.00 or $5,250.00.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

The FAA has determined that this rule does not contain any Federal intergovernmental mandates, but does contain a private sector mandate. However, because expenditures by the private sector will not exceed $100 million annually, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Federalism Implications

The regulations herein will not have substantial direct effects on the State, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA certifies that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Aviation safety.

14 CFR Part 135

Air taxi, Aircraft, Airmen, Aviation safety.

The Proposed Amendment

The Federal Aviation Administration proposes to amend 14 CFR parts 91 and 135 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

2. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44713, 44715–44717, 44722.

3. SFAR NO.—71–Special Operating Rules for Air Tour Operators in the State of Hawaii, section 8, is revised to read as follows:

SFAR NO. 71—Special Operating Rules for Air Tour Operators in The State of Hawaii

* * * * *

Section 8. Termination date. This Special Federal Aviation Regulation expires on October 26, 2003.

Issued in Washington, DC, on August 21, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 00–21631 Filed 8–21–00; 1:03 pm]

BILLING CODE 4910–13–M

135-76

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 129, and 135

[Docket No. FAA–2000–7467; Amendment Nos. 121–277, 129–29 and 135–76]

RIN 2120–AH04

Prohibition of Smoking on Scheduled Passenger Flights

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is amending its regulations to bring them into conformance with recent legislation prohibiting smoking aboard all aircraft in scheduled passenger interstate or intrastate air transportation and scheduled passenger foreign air transportation. This rule is being issued with a related DOT rule on smoking, which is published elsewhere in today's issue.

DATES: Effective June 4, 2000. See also "Discussion of Dates" under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Aviation Safety Inspector, AFS–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8321.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339), or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Internet users can find information on SBREFA on the FAA's web page at *http://www.faa.gov/avr/arm/sbrefa/htm* and may send electronic inquiries to the following internet address: 9–AWA–SBREFA@faa.gov.

Background

On April 5, 2000, Congress enacted Public Law 106–181, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. Among other things, section 708 of Public Law 106–181 amended 49 U.S.C. 41706 by directing the Secretary of Transportation to "require all air carriers and foreign air carriers to prohibit smoking in any aircraft in scheduled passenger foreign air transportation." The legislation also stated, "If a foreign government objects to the application [of the smoking prohibition in foreign air transportation] on the basis that [it] provides for an extraterritorial application of the laws of the United States, the Secretary shall waive the application of [the prohibition] to a foreign air carrier licensed by that foreign government at such time as an alternative prohibition negotiated * * * becomes effective and is enforced by the Secretary." In addition, the legislation stated, "* * * the Secretary shall enter into bilateral negotiations with the objecting foreign government to provide for an alternative smoking prohibition."

Previously, under the Office of the Secretary's rules (14 CFR part 252), smoking was prohibited for the following scheduled flight segments of air carriers:

- Between any two points within Puerto Rico, the United States Virgin Islands, the District of Columbia, or any State of the United States (other than Alaska or Hawaii) or between any two points in any one of the above-mentioned jurisdictions (other than Alaska or Hawaii);
- Within the State of Alaska or within the State of Hawaii; or
- Scheduled in the current Worldwide or North American Edition of the *Official Airline Guide* for 6 hours or less in duration and between any point listed in [the first bulleted paragraph above] and any point in Alaska or Hawaii, or between any point in Alaska and any point in Hawaii.

The Office of the Secretary's regulations applied predominantly to smoking in the passenger cabin, but smoking on the flight deck was permitted under the FAA's rules if authorized by the pilot in command for any part of the operation, except during airplane movement on the surface, takeoff, or landing. (*See* former 14 CFR 121.317(g).) However, since 1994, an international agreement has prohibited smoking on the flight deck of specified international flights (*e.g.*, certain flights between the United States and Australia). Many air carriers have voluntarily limited smoking in response to customer request. For example, at least one major air carrier has banned smoking on all airline property, including airplanes, crew buses, vehicles, and buildings.

Today's final rule is a direct result of legislative amendments to 49 U.S.C. 41706. Because Congress mandated these changes, good cause exists for the Department of Transportation to amend its rules concerning smoking (14 CFR part 252) and for the FAA to make conforming amendments to its own rules. A legislative mandate of this nature makes it "unnecessary" to provide notice and comment procedures. (*See* 5 U.S.C. 553 (b)(B).)

Section-by-Section Analysis

Section 121.317—Passenger information requirements, smoking prohibitions, and additional seat belt requirements—The heading is being revised to reflect the fact that the section contains smoking prohibitions in addition to passenger information and seat belt requirements.

Paragraph (c) is being revised in its entirety to apply to situations in which the new legislation and 14 CFR part 252 ban smoking. For those operations, no person may operate an airplane unless either the "No Smoking" passenger information sign is lighted for the entire flight, or one or more "No Smoking" placards meeting the requirements of 14 CFR 25.1541 are posted for the entire flight segment. Thus, paragraph (c) itself does not ban smoking on certain flights. Instead, the paragraph informs people who operate airplanes in part 121 operations that when smoking is banned for the entire flight segment (*e.g.*, on those flights identified in 14 CFR part 252), then either the "No Smoking" passenger information signs must be lighted, or "No Smoking" placards must be posted.

Other situations exist in which the new legislation and recent amendments to 14 CFR part 252 do not ban smoking.

In those situations, the FAA's long-standing rules have banned, and continue to ban, smoking at certain times. For example, in a part 121 supplemental operation (either an all-cargo operation or a passenger-carrying operation in which the air carrier/commercial operator did not hold out a schedule to the public), the recent legislative ban on smoking and the recent amendments to 14 CFR part 252 do not apply because it applies only on scheduled passenger flights. On supplemental operations, smoking has been banned, and continues to be banned, for example, "during any movement [of the airplane] on the surface, for each takeoff, for each landing, and at any other time considered necessary by the pilot in command." However, for supplemental operations, the legislation does not ban smoking in the passenger cabin during en route phases of the flight, unless the pilot in command considers it necessary to turn on the "No Smoking" signs. For all part 121, part 129, and part 135 operations, smoking has been, and continues to be, prohibited in any aircraft lavatory. The FAA's ban on smoking in lavatories applies regardless of whether the 14 CFR part 252 smoking ban applies to the entire flight segment or whether it is, for example, a part 121 supplemental or part 135 on-demand operation where the operator may permit smoking during an en route segment of the flight in some circumstances. (*See* 14 CFR 121.317 (h), 129.29 (a), and 135.127 (c).) These operators of supplemental and on-demand flights must keep in mind that there are additional smoking prohibitions for "small aircraft" specified in 14 CFR 252.13.

Also under newly revised § 121.317 (c), the word "aircraft" is being changed to "airplane" because part 121 has only airplanes, and former paragraphs (c)(1), (c)(2), and (c)(3) are being deleted since these provisions reflect the former statutory provisions.

Paragraph (g) of § 121.317 is being revised to identify certain kinds of operations conducted under part 121 where smoking has been neither banned by the recent legislative amendments nor changed by 14 CFR part 252. The revised paragraph specifies the situations during which a pilot in command permits smoking on the flight deck. It is important to explain what newly revised (g) does not do. It does not apply in those situations where Congress banned smoking on the entire aircraft. For example, the legislation and recently amended 14 CFR part 252 ban smoking on aircraft in scheduled passenger interstate air transportation or scheduled passenger intrastate air transportation. Thus, for purposes of part 121, smoking is banned for the entire flight segment on the entire airplane (including the flight deck) on most part 121 domestic operations.

Smoking is banned on all part 121 operations that are engaged in "interstate air transportation" operations, as that term is defined in 49 U.S.C. 40102(a)(25). However, some part 121 domestic operations that are conducted entirely within a State of the United States are not covered by the legislative ban on smoking. Congress provided that a person may not smoke in an aircraft in scheduled passenger "intrastate air transportation." The term "intrastate air transportation" is defined in 49 U.S.C. 40102(a)(27). To meet the statutory definition of "intrastate air transportation," the transportation must be provided by a common carrier for compensation or hire entirely within one State, and it must be done in a "turbojet powered aircraft capable of carrying at least 30 passengers." (See 49 U.S.C. 40102 (a)(27).) Therefore, if a part 121 domestic operation or a part 135 commuter operation is conducted entirely within one State but it is conducted with a turbojet aircraft that is not capable of carrying at least 30 passengers, or is conducted with an aircraft that is not turbojet powered, then it is not engaged in the statutory "intrastate air transportation." Thus, the legislative ban on smoking does not apply to those operations; however, a Department of Transportation ban on smoking in certain "small aircraft" may apply. (See 14 CFR 252.13.) On those domestic operations and commuter operations that are not covered by the legislative ban, by the Department of Transportation's 14 CFR part 252 ban, or by international agreement, the former regulations and the revised regulations permit the pilot in command to authorize smoking on the flight deck (if it is physically separated from the passenger compartment), except during aircraft movement on the surface or during takeoff or landing. However, when the 14 CFR part 252 ban applies, it also prohibits smoking whenever the aircraft is on the ground. The pilot in command may authorize smoking on the flight deck on flights not covered by the legislative ban or 14 CFR part 252, even when the "No Smoking" signs are lighted or when the "No Smoking" placards are posted, except during the aircraft movement specified in the previous sentence.

It should also be noted that the legislative ban does not apply to all-cargo operations and to "unscheduled" passenger-carrying operations, and thus, does not apply to most part 121 supplemental operations and most part 135 on-demand operations. There are a few scheduled passenger-carrying operations that are defined in § 119.3 as "On-demand operations." (See paragraph (2) of the definition of "On-demand operation" in § 119.3.) The few scheduled passenger-carrying operations that are classified by part 119 as "on-demand" are subject to the legislative ban and the 14 CFR part 252 ban, provided the flights are either scheduled passenger flights in interstate air transportation, or the flights are scheduled passenger intrastate air transportation operations conducted in turbojet powered aircraft capable of carrying at least 30 passengers. Therefore, in revised paragraph (g), the FAA is carrying forward the authority for the pilot in command to permit smoking on the flight deck (if it is physically separated from the passenger compartment) in certain situations (even when the "No Smoking" signs are lighted) for those flights not covered by the legislative ban or the 14 CFR part 252 ban on smoking. One situation in which the pilot in command does not have the authority to permit smoking on the flight deck is when the aircraft is moving on the surface, or during takeoff or landing.

Finally, because scheduled passenger-carrying public charter operations under 14 CFR part 380 are subject to the legislative ban on smoking, and because those operations are also subject to the 14 CFR part 252 ban on smoking, the FAA must make it clear in its rules that the pilots in command of aircraft in those operations do not have the authority to permit smoking on the flight deck. Scheduled passenger-carrying public charter operations conducted under 14 CFR part 380 are treated as Supplemental Operations under part 121, or On-Demand Operations under part 135, even though the operator may well hold out to the public a departure location, departure time, and arrival location, which satisfies the definition of "scheduled operations" in § 119.3.

Section 129.29 Smoking prohibitions—This section is being revised in its entirety to prohibit smoking by anyone anywhere on an aircraft during scheduled passenger foreign air transportation or during any scheduled passenger interstate or intrastate air transportation. The revised section also includes the words "unless authorized by the Secretary of Transportation," because the legislation states that foreign governments that object to the ban may negotiate alternatives with the Secretary.

Section 135.127 Passenger information requirements and smoking prohibitions—The heading of the section is being revised to include a reference to smoking prohibitions.

Paragraph (a) is being revised in its entirety to require that smoking by anyone at any time during any scheduled flight is prohibited and to specify the methods by which passengers may be notified of no smoking.

Paragraph (b) is being revised in a manner similar to the revisions to § 121.317(g). See discussion of § 121.317(g) above, except that part 121 refers only to airplanes, while part 135 refers to aircraft.

Discussion of Dates

Section 708 of Public Law 106–181 states that the amendment to 49 U.S.C. 41706 is effective on June 4, 2000 (60 days after the date of enactment of the legislation). This final rule, which implements conforming amendments to the FAA's regulations, is effective on June 4, 2000. Because Congress mandated these changes, good cause exists for the Department of Transportation to amend its rules concerning smoking (14 CFR part 252) and for the FAA to make conforming amendments to its rules. A legislative mandate makes it "unnecessary" to provide for notice and comment procedures. (See 5 U.S.C. 553 (b)(B).)

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this rule.

International Compatibility

In keeping with U.S. obligations under the convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA reviewed ICAO Standards and Recommended Practices but did not find corresponding provisions that differ from this rulemaking action.

In its 1992 session, the ICAO Assembly passed Resolution A29–15 concerning smoking on international passenger flights. The resolution called on member states to take appropriate measures "to restrict smoking progressively on all international flights." To reduce health hazards to passengers and crew and to enhance aviation safety, the governments of Australia, Canada, New Zealand, and the United States have since entered into an international agreement banning smoking on their airlines during all non-stop flights between those countries. This international agreement applies to all locations within an aircraft in passenger operation, including the flight deck, cabin, and lavatories.

Economic Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act also requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined this rule: (1) Has benefits that do justify its costs, is not a "significant regulatory action," as defined in the Executive Order, and is "significant," as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) reduces barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses are summarized below.

This rule incorporates the provisions of 49 U.S.C. 41706 (as amended by section 708 of Pub. L. 106–181) into 14 CFR Parts 121, 129, and 135, and any costs and benefits that will result from this rulemaking are attributable to the legislation. Former Department of Transportation provisions allowing smoking on flights over 6 hours in duration are superseded by the new legislation. In addition, if a foreign air carrier's host government objects to these provisions and comments to the Secretary of Transportation, the Secretary will negotiate the issue.

The methods that will be used to inform passengers of the smoking prohibition are the lighted passenger information sign or posted "No Smoking" placards, and the required safety briefing. The costs involved with this rule, which are attributable to the legislation, are minor, as a smoking prohibition has been in place domestically for a decade, and some air carriers have already banned smoking on all flights without regulation.

Air carriers will realize some savings from this rule, which are attributable to the legislation. There will be less wear and tear on the ventilation systems on newly covered aircraft, and each of these aircraft may have to be cleaned less often. Air carriers will not have to deal with the logistics of smoking versus no-smoking sections. In addition, there are health benefits to people from prohibiting smoking aboard aircraft.

The FAA concludes that there are some economic benefits to the air carriers from prohibiting smoking on these newly included flights. Congress, which reflects the will of the American public, has also determined that the smoking ban is in the best interest of the nation. As stated above, this rule directly reflects legislative requirements and therefore the associated minor costs and benefits occur as a result of the legislation rather than the rule.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (the Act) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small

entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

For this rule, the small entity group is considered to be part 121, part 129, and part 135 air carriers or commercial operators (Standard Industrial Classification Code (SIC) 4512). As noted above, the costs for each air carrier and commercial operator will be minimal.

The FAA conducted the required review of this rule and determined that it will not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA certifies that this rule will not have a significant impact on a substantial number of small entities.

International Trade Impact Statement

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule and has determined that it will impose the same costs on domestic and international entities and thus has a neutral trade impact.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the states or the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications.

Unfunded Mandates Determination

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pubic Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Pubic Law 94–163, as amended (43 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety.

14 CFR Part 129

Air carriers, Aircraft, Airports, Aviation safety.

14 CFR Part 135

Aircraft, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends title 14 CFR parts 121, 129, and 135 as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. Amend § 121.317 by revising the section heading and paragraphs (c) and (g) to read as follows:

§ 121.317 Passenger information requirements, smoking prohibitions, and additional seat belt requirements.

* * * * *

(c) No person may operate an airplane on a flight on which smoking is prohibited by part 252 of this title unless either the "No Smoking" passenger information signs are lighted during the entire flight, or one or more "No Smoking" placards meeting the requirements of § 25.1541 of this chapter are posted during the entire flight segment. If both the lighted signs and the placards are used, the signs must remain lighted during the entire flight segment.

* * * * *

(g) No person may smoke while a "No Smoking" sign is lighted or while "No Smoking" placards are posted, except as follows:

(1) *Supplemental operations.* The pilot in command of an airplane engaged in a supplemental operation may authorize smoking on the flight deck (if it is physically separated from any passenger compartment), but not in any of the following situations:

(i) During airplane movement on the surface or during takeoff or landing;

(ii) During scheduled passenger-carrying public charter operations conducted under part 380 of this title; or

(iii) During any operation where smoking is prohibited by part 252 of this title or by international agreement.

(2) *Certain intrastate domestic operations.* Except during airplane movement on the surface or during takeoff or landing, a pilot in command of an airplane engaged in a domestic operation may authorize smoking on the flight deck (if it is physically separated from the passenger compartment) if—

(i) Smoking on the flight deck is not otherwise prohibited by part 252 of this title;

(ii) The flight is conducted entirely within the same State of the United States (a flight from one place in Hawaii to another place in Hawaii through the airspace over a place outside of Hawaii

is not entirely within the same State); and

(iii) The airplane is either not turbojet-powered or the airplane is not capable of carrying at least 30 passengers.

* * * * *

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

3. The authority citation for part 129 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 41706, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

4. Revise § 129.29 to read as follows:

§ 129.29 Smoking prohibitions.

(a) No person may smoke and no operator may permit smoking in any aircraft lavatory.

(b) Unless otherwise authorized by the Secretary of Transportation, no person may smoke and no operator may permit smoking anywhere on the aircraft (including the passenger cabin and the flight deck) during scheduled passenger foreign air transportation or during any scheduled passenger interstate or intrastate air transportation.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

5. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

6. Amend § 135.127 by revising the heading and paragraphs (a) and (b) to read as follows:

§ 135.127 Passenger information requirements and smoking prohibitions.

(a) No person may conduct a scheduled flight on which smoking is prohibited by part 252 of this title unless the "No Smoking" passenger information signs are lighted during the entire flight, or one or more "No Smoking" placards meeting the requirements of § 25.1541 of this chapter are posted during the entire flight. If both the lighted signs and the placards are used, the signs must remain lighted during the entire flight segment.

(b) No person may smoke while a "No Smoking" sign is lighted or while "No Smoking" placards are posted, except as follows:

(1) *On-demand operations.* The pilot in command of an aircraft engaged in an on-demand operation may authorize smoking on the flight deck (if it is physically separated from any passenger compartment), except in any of the following situations:

(i) During aircraft movement on the surface or during takeoff or landing;

(ii) During scheduled passenger-carrying public charter operations conducted under part 380 of this title;

(iii) During on-demand operations conducted interstate that meet paragraph (2) of the definition "On-demand operation" in § 119.3 of this chapter, unless permitted under paragraph (b)(2) of this section; or

(iv) During any operation where smoking is prohibited by part 252 of this title or by international agreement.

(2) *Certain intrastate commuter operations and certain intrastate on-demand operations.* Except during aircraft movement on the surface or during takeoff or landing, a pilot in command of an aircraft engaged in a commuter operation or an on-demand operation that meets paragraph (2) of the definition of "On-demand operation" in § 119.3 of this chapter may authorize smoking on the flight deck (if it is physically separated from the passenger compartment, if any) if—

(i) Smoking on the flight deck is not otherwise prohibited by part 252 of this title;

(ii) The flight is conducted entirely within the same State of the United States (a flight from one place in Hawaii to another place in Hawaii through the airspace over a place outside Hawaii is not entirely within the same State); and

(iii) The aircraft is either not turbojet-powered or the aircraft is not capable of carrying at least 30 passengers.

* * * * *

Issued in Washington DC on June 2, 2000.

Jane F. Garvey,

Administrator.

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