predetermined carbon bed regeneration time.

(l) Each occurrence when the carbon in a carbon adsorber system that is not regenerated directly on site in the control device is not replaced at the predetermined interval specified in § 61.354(c) of this subpart.

(7) Beginning one year after the date that the equipment necessary to comply with these standards has been certified in accordance with paragraph (d)(1) of this section, the owner or operator shall submit annually to the Administrator a report that summarizes all inspections required by §§ 61.342 through 61.352 of this subpart during which detectable emissions are measured or a problem (such as a broken seal, gap or other problem) that could result in benzene emissions is identified, including information about the repairs or corrective action taken.

(e) An owner or operator electing to comply with the provisions of §§ 61.351 or 61.352 of this subpart shall notify the Administrator of the alternative standard selected in the report required under § 61.07 or § 61.10 of this part.

(f) An owner or operator who elects to install and operate the control equipment in § 61.351 of this subpart shall comply with the reporting requirements in 40 CFR 60.115b.

(g) An owner or operator who elects to install and operate the control equipment in § 61.352 of this subpart shall submit initial and quarterly reports that identify all seal gap measurements, as required in 40 CFR 60.693–2(a), that are outside the prescribed limits.

(Approved by the Office of Management and Budget under control number 2060–0183)

§ 61.358 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Clean Air Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Alternative means of emission limitation under § 61.353 of this subpart will not be delegated to States.

[FR Doc. 90–4914 Filed 3–5–90; 8:45 am]
BILLING CODE 6560–50–M

federal register

Wednesday
March 7, 1990

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 121 et al.
Prohibition Against Smoking; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 129 and 135

[Docket No. 25590; Amdt. Nos. 121-213, 129-20, and 135-35]

RIN 2120-AC 83

Prohibition Against Smoking

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule and request for comments.

SUMMARY: This rule implements the prohibition against smoking contained in Public Law 101-164 enacted on November 21, 1989. This legislation makes it unlawful for any person to smoke in the passenger cabin or lavatory of an airplane during most scheduled flight segments in the United States. The statutory prohibition applies to U.S. and foreign air carriers.

In addition to implementing the smoking prohibition, this rule amends the Federal Aviation Regulations to conform with an amendment to the Federal Aviation Act of 1958 that prohibits persons from tampering with smoke detectors installed in airplane lavatories.

DATES: Effective Date: February 25, 1990.

Comments By: April 23, 1990.

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: Larry Youngblut, Project Development Branch (AFS-240), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591, Telephone (202) 267-3755.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in this rulemaking by submitting written comments. 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 comments.

The Administrator will consider any comment received by the closing date for comments. This final rule may be amended after considering the comments received.

The FAA will acknowledge receipt of a comment if the commenter submits with the comment a pre-addressed, stamped postcard with the statement: "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 request a copy of this final rule from 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 also request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

In 1973, the Civil Aeronautics Board (CAB) issued the first rules regulating smoking aboard airplanes for passenger comfort and convenience. The CAB required U.S. operators of commercial flights to provide a nonsmoking seating section on board airplanes. The CAB continued to administer regulations restricting smoking on domestic flights until 1984, when the agency ceased to exist and oversight of regulation was transferred to the Department of Transportation.

In 1984, Congress enacted Pub. L. 98-466. This legislation directed the Secretary of Transportation to commission the National Academy of Sciences (NAS) to conduct an independent study on the cabin air quality in airliners. NAS formed the Committee on Airliner Cabin Air Quality (Committee), which published a study in August 1986. The Committee presented 21 recommendations, one of which included a proposed smoking ban on all commercial domestic flights.

In December 1987, Congress enacted Pub. L. 100-202, which amended 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 take 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.

The Federal Aviation Administration (FAA) issued a final rule implementing the 1987 statutory provisions on April 11, 1988, and published it in the **Federal Register** on April 13, 1988 (52 FR 12358).

New Legislative Requirement

In November 1989, Congress enacted the Department of Transportation and Related Agencies Appropriation Act of 1990 (Pub. L. 101-164). In section 335 of the legislation, Congress amended section 404 of the Federal Aviation Act (Pub. L. 101-164). This amendment (section 404(d)(1)(A)) (smoking prohibition or prohibition) prohibits smoking in the passenger cabin or lavatory of any scheduled airline flight segment in air transportation or intrastate air transportation, which is:

(i) 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 and Hawaii), or between any point in any one of the aforesaid jurisdictions (other than Alaska and Hawaii) and any point in any other of such jurisdiction;

(ii) Within the State of Alaska or within the State of Hawaii; or

(iii) Scheduled for 6 hours or less in duration, and between any point described in (i) and any point in Alaska or Hawaii, or between any point in Alaska and any point in Hawaii.

The legislation deletes the current 2-hour smoking ban and provides that the new prohibition take effect February 25, 1990.

Under the law, smoking is not prohibited on flight segments originating or terminating outside of the United States, or on flights scheduled for longer than 6 hours in duration between Alaska and Hawaii, or on flights scheduled for longer than 6 hours in duration and between Alaska or Hawaii and any other point in the United States described in the legislation.

The smoking prohibition is contained in title IV, section 404 of the Federal Aviation Act. Title IV governs the economic and consumer protection aspects of air transportation. It is the Office of the Secretary of Transportation that has the authority to promulgate

rules under title IV. The Secretary has decided that certain rules necessary to carry out the smoking prohibition should be administered by the FAA in addition to the Office of the Secretary, which issued its own rule separately (55 FR 4991; February 13, 1990). This decision is based on the fact that the passenger information signs, posted placards, and passenger briefings used to inform passengers of the smoking prohibition are regulated by the FAA. Therefore, the Secretary of Transportation has delegated to the Administrator some of the authority to promulgate rules that implement and enforce the statutory prohibition against smoking contained in section 404 of the Act, as amended by section 335 of the Department of Transportation and Related Agencies Appropriations Act of 1990. This delegation appears elsewhere in this publication.

Foreign Air Carriers

Since the enactment of the legislation, many people have asked whether the smoking prohibition applies to scheduled flight segments operated by foreign air carriers. Under Public Law 101–164, smoking is prohibited on all scheduled flight segments in air transportation between the locations specified in the legislation, including those flight segments operated by foreign air carriers.

The legislation provides that:

> It shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight segment in air transportation or intrastate air transportation. * * *

In section 101 of the Act, the definition of "air transportation" includes interstate, overseas, and foreign air transportation. Therefore, by definition, foreign air transportation by foreign air carriers is air transportation within the meaning of the smoking prohibition. Consequently, the only limitations on the application of the smoking prohibition are the geographic locations described in the legislation. Thus, it is the geographic location of the flight segment, not who conducts it, that determines whether the prohibition applies. Moreover, the Conference Report on Public Law 101–164 confirms Congress' intent to include the flight segments of foreign carriers. The report states that:

> The ban would apply to foreign carriers operating on any of these routes as well as to domestic carriers.

Therefore, the scheduled flight segments of foreign air carriers that are operated between the points described in the legislation are subject to the prohibition.

Discussion of Rule

Scheduled Flight Segments

To apply the current 2-hour smoking ban, the FAA had to determine which flights were "scheduled" flights and which flights were 2 hours or less in duration. The FAA concluded that the North American Edition of the *Official Airline Guide* (OAG) would be used to define "scheduled" flights and to determine the duration of flights (52 FR 12358). The rationale for using the OAG was that passengers, air carriers, and FAA inspectors should use the same resource to determine which flights were subject to the smoking ban. A comprehensive and accessible list of scheduled flights was needed and the OAG provides such a list.

Experience with the 2-hour smoking ban has shown that the OAG contains the most comprehensive and accessible listing of flight segments. For these reasons, the application and enforcement of the smoking ban has been efficient and trouble free. Therefore, the FAA will continue to use the OAG to define which flight segments are scheduled and to determine the duration of flight segments originating or terminating in Alaska and Hawaii. Thus, for the purpose of the smoking prohibition, "scheduled flight segments" are nonstop flights between two airports that are listed in either the Worldwide or North American Editions of the OAG. The following examples are helpful in understanding the new rule.

(1) The Worldwide Edition of the OAG lists a flight from San Francisco to Madrid, with one intermediate stop. Because there is an intermediate stop, the flight can be located in the OAG flight itinerary section. In the flight itinerary section, the flight is listed as San Francisco-Dallas-Madrid. Smoking is prohibited on the San Francisco to Dallas flight segment. Smoking is permitted on the flight segment from Dallas to Madrid because it is not between two points within the United States.

(2) The Worldwide Edition of the OAG lists a flight from Manila to New York with 3 intermediate stops. In the flight itinerary section, the flight is listed as Manila-Honolulu-San Francisco-Los Angeles-New York. Smoking is permitted on the flight segment between Manila and Honolulu. Smoking is permitted on the flight segment between Honolulu and San Francisco if that flight segment is scheduled for more than 6 hours in duration. However, if the flight segment between Honolulu and San Francisco is scheduled for 6 hours or less, smoking is prohibited. The exception to the smoking prohibition for flight segments scheduled for longer than 6 hours in duration only applies to flight segments that are between the U.S. jurisdictions described in the legislation and originating or terminating in Alaska or Hawaii, or flight segments between Alaska and Hawaii. Therefore, the smoking prohibition applies to all the remaining U.S. flight segments of this flight itinerary despite the scheduled duration of the flight segment.

The domestic flight segments in the two examples, i.e., San Francisco-Dallas, and Honolulu-San Francisco-Los Angeles-New York, appear in the flight itinerary section of the Worldwide Edition of the OAG as intermediate stops. These flight segments also appear in the schedules section of the North American Edition of the OAG as nonstop domestic flights. A flight segment listed in either edition of the OAG, and in any section of the OAG, is a "scheduled" flight for the purpose of applying the smoking prohibition.

Part 121

Section 121.317, Passenger Information, is amended by removing the current 2-hour smoking ban and replacing it with the smoking prohibition. The amended section provides that no person may conduct a scheduled flight segment on which smoking is prohibitited unless the "No Smoking" passenger information signs are turned on during the entire flight segment, or one or more "No Smoking" placards meeting the requirements of title 14, § 25.1541 of the FAR are posted during the entire flight segment. The air carrier may use both the passenger information signs and posted placards during the entire flight segment. The amended section also describes the flight segments on which smoking is prohibited.

The regulation requires that the passenger information signs be either on or off during the entire flight segment when smoking is prohibited. If a certificate holder uses both the posted placards and the passenger information signs, the placards must be posted, and the signs must be turned on for the entire flight segment. The regulation does not permit a certificate holder to turn the passenger information signs on during takeoff, turn them off while in flight and rely upon the posted "No Smoking" placards, and turn the information signs back on during landing. Turning the inforation signs on and off will confuse passengers and make enforcement of the prohibition difficult.

Paragraph (g) of § 121.317 is amended so passengers are required to comply

with the "No Smoking" placards. Current paragraph (g) only requires passenger compliance with the lighted passenger information signs.

Paragraph (i) of § 121.317 is completely revised. The current paragraph is the expiration date of the 2-hour smoking ban. That language is deleted and new paragraph (i) incorporates a 1987 amendment to the Act which made it unlawful for any person to tamper with the smoke detector installed in an airplane lavatory.

Part 129

Section 129.29, Prohibition Against Smoking, is a new section that makes smoking unlawful during scheduled flight segments of foreign carriers in the United States between the locations specified by Congress in Public Law 101–164. The FAA believes that foreign air carriers can best determine how to implement the prohibition during scheduled flight segments in the United States. Therefore, new § 129.29 does not require that the passenger information signs be lighted or that "No Smoking" placards be posted during flight segments when smoking is prohibited.

The FAA encourages foreign air carriers to comment on this final rule. The FAA will consider all comments received and may amend the rule based on those comments.

Part 135

Section 135.127, Passenger Information, is amended by removing the current 2-hour smoking ban provision and replacing it with the new smoking prohibition. The amended section contains the same provisions as § 121.317 and will be similarly applied.

Paragraph (b) of § 135.127 is amended so passengers must comply with posted "No Smoking" placards. Current paragraph (b) only requires compliance with the lighted passenger information signs.

Paragraph (e) of § 135.127 is completely revised. The current paragraph is the expiration date of the 2-hour smoking ban. That language is deleted and new paragraph (e) incorporates the 1987 amendment to the Act which made it unlawful for any person to tamper with the smoke detector installed in any airplane lavatory.

Compliance

Several air carriers have asked questions regarding their role in the application of the prohibition against smoking. The FAA expects that air carriers will enforce the prohibition in a manner similar to the enforcement of the current 2-hour smoking ban. Air carriers should provide instructions to crewmembers and other appropriate personnel regarding the procedures for ensuring compliance with the prohibition against smoking and tampering with the smoke detector. These procedures should include methods for reporting cases where passengers have violated the smoking prohibition or tampered with a smoke detector. A separate and complementary Office of the Secretary of Transportation rule (14 CFR part 252) also requires air carriers to enforce the smoking prohibition.

Economic Summary

This rule incorporates the provisions of section 335 of Public Law 101–164 into the Federal Aviation Regulations (FAR) and, as such, is incorporated into the Code of Federal Regulations in 14 CFR part 121, part 129, and part 135. The FAA's responsibility is to devise and promulgate a set of procedures to require a total prohibition on smoking in the passenger cabin or lavatory on virtually all scheduled airline flights within the United States.

Specifically, the prohibition against smoking is effective: (1) 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 and Hawaii), or between any point in any one of the aforesaid jurisdictions (other than Alaska and Hawaii) and any point in any other of such jurisdictions; (2) within the State of Alaska or within the State of Hawaii; or (3) scheduled in the current *Official Airline Guide* for 6 hours or less in duration and between any point described in (1) above and any point in Alaska or any point in Hawaii, or between any point in Alaska and any point in Hawaii.

Each of the changes in parts 121, 129, and 135 is identified and explained in the analysis in the full Regulatory Evaluation contained in the docket.

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. Thus, the costs involved with this rule are minor.

Air carriers will realize savings from this rule. There will be less wear and tear on the ventilation systems in airplanes, and each airplane may have to be cleaned less often. In addition, there appear to be health benefits to nonsmoking passengers and to flight attendants from prohibiting smoking aboard aircraft.

The FAA concludes that there are benefits to both the air carriers and to a large portion of the flying public and flight attendants from prohibiting smoking on these domestic flights. As the costs of compliance are minimal, the FAA finds that this rule is cost beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires Federal agencies to review rules which may have a "significant economic impact on a substantial number of small entities."

The FAA's criteria for a "substantial number" are a number which is not less than 11 and which is more than one third of the small entities subject to the rule. For air carriers, a small entity has been defined as one who owns, but does not necessarily operate, nine or less aircraft. The FAA's criteria for a "significant impact" are at least $3,800 per year for an unscheduled carrier, $53,500 for a scheduled carrier having airplanes with only 60 or fewer seats, and $95,800 per year for a scheduled carrier having an airplane with 61 or more seats.

As was discussed above, there is little or no cost associated with this rule. Therefore, the FAA certifies that the rule does not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

This rule affects both U.S. air carriers and foreign air carriers who conduct scheduled air transportation and intrastate air transportation on those flight segments described above. It does not affect either U.S. or foreign air carriers conducting flight segments that originate or terminate in a foreign country. Because the rule imposes negligible costs and impacts U.S. and foreign carriers equally in international transportation, the FAA has determined that these regulations do not have an impact on international trade.

Federalism Implications

The regulations set forth in this amendment are being adopted pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.). That statute preempts 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.

Conclusion

The FAA has determined that this amendment is not major under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more. It is also determined that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because it involves a subject of substantial public interest. A copy of the full Regulatory Evaluation is filed in the docket.

List of Subjects in 14 CFR Parts 121, 129 and 135

Air carriers, Aircraft, Airmen, Air taxis, Aviation safety, Charter flights, Drug testing, Reporting and recordkeeping requirements, Safety, Security measures, Smoking, Transportation.

For the reasons set out in this preamble, parts 121, 129 and 135 of title 14, chapter I of the Code of Federal Regulations are amended as set forth below.

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 revised to read as follows:

Authority: 49 U.S.C. 1354 (a), 1355, 1356, 1357, 1374 (d) (as amended by Pub. L. 101–164 and 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 paragraphs (c), (g), and (i) and adding a new paragraph (j) to read as follows:

§ 121.317 Passenger information.

* * * * *

(c) No person may operate an aircraft on a flight segment on which smoking is prohibited unless the "No Smoking" passenger information signs are lighted during the entire flight segment, or one or more "No Smoking" placards meeting the requirements of § 25.1541 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. Smoking is prohibited on scheduled flight segments:

(1) 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);

(2) Within the State of Alaska or within the State of Hawaii; or

(3) 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 paragraph (c) (1) of this section and any point in Alaska or Hawaii, or between any point in Alaska and any point in Hawaii.

* * * * *

(g) No person may smoke while a "No Smoking" sign is lighted or if "No Smoking" placards are posted, except that the pilot in command may authorize smoking on the flight deck except during landings and takeoffs.

* * * * *

(i) No person may tamper with, disable, or destroy any smoke detector installed in any airplane lavatory.

(j) On flight segments other than those described in paragraph (c) of this section, the "No Smoking" sign must be turned on for each takeoff and landing and at any other time considered necessary by the pilot in command.

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. 1346, 1354(a), 1356, 1357, 1421, 1502, and 1511; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983; 49 U.S.C. 1374(d) Public Law 101–164, November 21, 1989).

4. By adding new § 129.29 to read as follows:

§ 129.29 Prohibition against smoking.

No person may smoked and no operator shall permit smoking in the passenger cabin or lavatory during any scheduled airline flight segment in air transportation or intrastate air transportation which is:

(a) 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);

(b) Within the State of Alaska or within the State of Hawaii; or

(c) 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 paragraph (a) of this section and any point in Alaska or Hawaii, or between any point in Alaska and any point in Hawaii.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

5. 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. 101–164 and Pub. L. 100–202), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

6. Section 135.127 is revised to read as follows:

§ 135.127 Passenger information.

(a) No person may conduct a scheduled flight segment on which smoking is prohibited unless the "No Smoking" passenger information signs are lighted during the entire flight segment, or one or more "No Smoking" placards meeting the requirements of § 25.1541 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. Smoking is prohibited on scheduled flight segments:

(1) 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);

(2) Within the State of Alaska or within the State of Hawaii; or

(3) Scheduled in the current Worldwide or North American Edition of the *Official Airline Guide* or 6 hours or less in duration and between any point listed in paragraph (a)(1) of this section and any point in Alaska or Hawaii, or between any point in Alaska and any point in Hawaii.

(b) No person may smoke while a "No Smoking" sign is lighted or while "No Smoking" placards are posted, 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) No person may tamper with, disable, or destroy any smoke detector installed in any aircraft lavatory.

(e) On flight segments other than those described in paragraph (a) of this section, the "No Smoking" signs

required by § 135.177 (a) (3) of this part must be turned on for each takeoff and landing and at any other time considered necessary by the pilot in command.

Issued in Washington, DC, on February 28, 1990.

James B. Busey,

Administrator.

[FR Doc. 90–4983 Filed 3–2–90; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
March 7, 1990

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 39

Airworthiness Directives; Boeing Model 727, 737, 747, and 707/720 Series Airplanes; Final Rules and Notices of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-60-AD; Amdt. 39-6488]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which would require incorporation of certain structural modifications. This amendment is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their design life goal. These incidents jeopardized the airworthiness of the affected airplanes. These conditions, if not corrected, could result in a degradation in the structural capabilities of the affected airplanes. This action also reflects the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspection.

DATES: Effective April 17, 1990. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 17, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington; at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Regin, 9010 East Marginal Way South, Seattle, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing 727 series airplanes, which requires incorporation of certain structural modifications, was published in the **Federal Register** on May 23, 1989 (54 FR 22302).

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

The manufacturer suggested that the latest revision to Boeing Document D6-54860 be used to reflect the current service bulletin revision levels. The FAA concurs and the final rule has been revised to reflect Document D6-54860, Revision C as the appropriate service document. The changes to Document D6-54860 do not add or delete any identified service bulletins, but merely clarify and correct the document. Acceptable service bulletin revision levels that are identified in the document have been increased.

Several commenters suggested that the age of the airplane should be made available to the traveling public when the flight reservation is made. The FAA considers this suggestion to be beyond the scope of this rulemaking action. However, the FAA has determined that an airplane properly maintained will be safe beyond its designed economic life goal. Therefore, the FAA does not consider that stating the age of an airplane will do anything to improve the level of safety. The most important thing is to assure that older airplanes are properly maintained, and this is the basis for the actions taken by the FAA with regard to the modification program mandated by this AD action, and the soon-to-be-proposed mandatory corrosion progam.

One commenter proposed that all older airplanes be retired upon reaching 20 years. The FAA does not concur. Airplanes maintained in accordance with the actions required by this final rule, existing AD's, as well as other new actions to be proposed by the FAA based on the recommendations of the Aging Aircraft Task Force, should be able to remain in service indefinitely.

One commenter requested that the compliance requirements be clarified, and questioned whether it was necessary to comply with certain service bulletins upon the airplane reaching 20 years of age or within 4 years. The FAA considers the compliance requirements to be clearly stated in paragraph A. of the final rule. In general, however, the modifications must be completed before an airplane reaches 20 years of service or within 4 years after the effective date of the AD, whichever is later.

Another commenter requested that FAA Designated Engineering Representatives (DER) at the manufacturer's facility be allowed to approve certain alternate means of compliance to this AD. The FAA does not concur. Airworthiness directives are a primary responsibility of the FAA, and alternate means of compliance must be approved by the Manager, Seattle Aircraft Certification Office. This function cannot be delegated to a DER. While DER's are authorized to determine whether an alternate design complies with a specific requirement, they are not authorized to make discretionary determinations as to what the applicable requirement is.

Another commenter requested that the rule be revised to allow operators to perform minor deviations from the AD without obtaining FAA approval. The FAA does not concur, because what is "minor" is open to interpretation. The FAA must continue to approve all deviations.

An operator of an executive Model 727 stated that low utilization operators were not involved in the Aging Aircraft Task Force working group and, therefore, their concerns were not considered when the mandatory modification program was developed. Further, the commenter did not understand the basis for incorporation of certain modifications on airplanes that are 20 years old. The FAA notes that the working group did have members that were considered to be low utilization operators. The working group selected certain service bulletins for incorporation on airplanes that were 20 years old. The procedures described in those service bulletins address problems associated with corrosion and/or stress corrosion that are time-dependent; as such, these problems are more appropriately corrected by modification of the airplane prior to reaching 20 years of age, rather than 60,000 flight cycles.

This commenter further stated that if the 20-year compliance time was selected because of corrosion, the emphasis should be placed upon a corrosion control program. The FAA concurs that corrosion control is important, and has initiated rulemaking to propose a corrosion program that will affect Model 727 airplanes. A Notice of Proposed Rulemaking is being issued concurrently with this amendment. However, the actions required by this final rule, prior to an aircraft reaching 20 years of age, are all related to known, frequent problems related to corrosion that can be alleviated after the modifications described in the service bulletins are incorporated.

Finally, this commenter stated that the FAA appears to be relying upon the mandatory modification program while reducing reliance on non-destructive testing. The FAA does not agree. This mandatory modification program will not replace the diligent, continuing

inspection of the airplane fleet for defects, as required by the FAA-approved maintenance programs and other existing AD's.

Another Model 727 executive operator stated that it has not experienced the problems associated with corrosion, cracking, or delamination. Therefore, the commenter proposed that only inspections be required for low-utilization aircraft. The FAA does not concur with this suggestion for the reasons noted in the above paragraph as well as in the preamble to the Notice.

Several commenters expressed concern regarding the ability of the manufacturer to supply the parts necessary to complete the modifications. The FAA considered this concern during the development of the compliance time for this AD action. The manufacturer has confirmed that ample parts will be available to meet the schedule mandated by this final rule.

Various foreign airworthiness authorities stated that (1) compliance times were arbitrarily chosen, independent of any fatigue history; (2) no mandatory inspections were required for all areas not affected by an existing AD; and (3) no post-modification inspections were proposed.

As for item (1), the FAA does not concur with the suggestion that the compliance times for the modifications were arbitrarily chosen. On the contrary, in developing the appropriate compliance times for this AD action, the FAA, with input from the aviation industry/community, considered not only the degree of urgency associated with addressing the identified unsafe condition, but the practical aspects of the availability of required parts, the time necessary to install the required modifications, and the availability of overhaul facilities to perform the necessary work. Further, fatigue history is always considered when assessing inspection thresholds for problems caused by fatigue. Likewise, repetitive inspection intervals are based on damage tolerance assessments when appropriate.

As for item (2), the FAA does not fully agree. While several of the service bulletins included in Boeing Document D6–54860 are the subject of currently existing AD's (which require inspections and optional modifications), other service bulletins and their related inspections are under consideration for mandatory action, and will be handled on a case-by-case basis. As was explained in detail in the preamble to the Notice, safety will continue to be maintained by various means currently in place that are considered satisfactory to detect damage prior to the occurrence of an unsafe condition. These include on-going basic maintenance programs, inspections/modifications required by existing AD's, Supplemental Structural Inspection Document programs, and the like.

As for item (3), the FAA has determined that there is no need to stipulate special "post-modification inspections" since the operators' existing on-going inspection programs include such inspections and are acceptable to monitor the affected area.

Accordingly, the FAA has determined that no change to the final rule is warranted based on these comments made by the foreign airworthiness authorities.

Several commenters requested that the FAA accept alternate means of compliance involving inspections if required modification parts cannot be obtained. The FAA will review each case individually to consider alternate means of compliance, as provided for in paragraph B of the final rule.

One commenter questioned whether there is adequate maintenance capability to comply with this rule and similar rules affecting other aging airplanes. As discussed above, the FAA considered this aspect when developing the compliance times for this action. At this point, the FAA considers there to be adequate facilities for accomplishing the requirements of this rule in a timely manner.

Finally, a commenter questioned the accuracy of the number of aircraft affected by the proposed rule and the estimated costs. This commenter, however, provided no new figures to contradict those reflected in the Notice. The FAA based the number of airplanes and cost estimates upon the best data that was currently available. The cost estimates represent the average costs and rates based on overall industry standards.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will not increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,710 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 67 airplanes of U.S. registry will be affected by this AD within the initial threshold of 4 years. The cost to modify each airplane is estimated to be $1,057,212. This cost includes the price of modification kits, which is $362,932 per airplane, and the estimated number of manhours to accomplish the modifications, which is approximately 17,357 manhours at $40 per manhour. It does not include the cost of downtime, planning, set up, familiarization, or tool acquisition costs. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $70,833,204 within the initial threshold of 4 years.

Additional airplanes will be affected as they accumulate time-in-service and reach the threshold for modification.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes, listed in Boeing Document No. D6–54860, Revision C, dated December 11, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural failure, accomplish the following:

A. Except as provided below, prior to reaching the incorporation thresholds listed in Boeing Document No. D6–54860, Revision C, dated December 11, 1989, "Aging Airplane Service Bulletin Structural Modification Program—Model 727" (hereinafter called "the Document"), or within the next 4 years after the effective date of this AD, whichever occurs later, accomplish the structural modifications listed in section 3 of the Document. Modifications for which the incorporation threshold is identified in the Document as a specific date must be accomplished by that date in lieu of the 4 years specified in this paragraph.

Note: The modifications required by this paragraph do not terminate the inspection requirements of any other AD unless that AD specified that any such modification constitutes terminating action of the inspection requirements.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The modifications shall be done in accordance with Boeing Document D6–54860, Revision C, dated December 11, 1989, "Aging Airplane Service Bulletin Structural Modification Program—Model 727." This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington; or at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC.

This amendment becomes effective April 17, 1990.

Issued in Seattle, Washington, on January 16, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–5131 Filed 3–6–90; 11:59 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–NM–67–AD; Amdt. 39–6489]

Airworthiness Directives: Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires incorporation of certain structural modifications. This amendment is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their design life goal. These incidents jeopardized the airworthiness of the affected airplanes. These conditions, if not corrected, could result in a degradation in the structural capabilities of the affected airplanes. This action also reflects FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspection.

DATES: Effective April 17, 1990. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 17, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington; at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Airframe Branch, ANM–120S; telephone (206) 431–1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737 series airplanes, which requires incorporation of certain structural modifications, was published in the **Federal Register** on May 23, 1989 (54 FR 22304).

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

The manufacturer suggested that the latest revision to Boeing Document D6–38505, be used to reflect the current service bulletin revision levels. The FAA concurs and the final rule has been revised to reflect Document D6–38505, Revision C, dated December 11, 1989, as the appropriate service document. The changes to Document D6–38505 do not add or delete any identified service bulletins, but merely clarify and correct the document. Acceptable service bulletin revision levels that are identified in the document have been increased.

The Air Transport Association (ATA) of America commented on behalf of its members. While the ATA supports this program, two primary concerns were raised: First, that all service bulletins be in final form prior to the issuance date of the AD; and second, that required modification parts are available in order to accomplish the required modifications. The FAA has addressed these two concerns. All associated service bulleting will be released prior to the issuance date of this final rule, and the manufacturer has confirmed that parts will be available to meet the mandatory requirements.

Another commenter requested that FAA Designated Engineering Representatives (DER) at the manufacturer's facility be allowed to approve certain alternate means of compliance to this AD. The FAA does not concur. Airworthiness Directives are a primary responsibility of the FAA, and alternate means of compliance must be approved by the Manager, Seattle Aircraft Certification Office. This function cannot be delegated to a DER. While DER's are authorized to determine whether an alternate design complies with a specific requirement, they are not authorized to make discretionary determinations as to what the applicable requirement is.

Another commenter requested that the rule be revised to allow operators to perform minor deviations from the AD without obtaining FAA approval. The FAA does not concur, because what is "minor" is open to interpretation. The FAA must continue to approve all deviations.

Another commenter requested the compliance period for a particular service bulletin be changed and that alternate means of compliance should be available for airplanes previously repaired. The FAA does not concur with

the compliance time extension. The compliance times were based on the combined service experience of the Service Working Group (as part of the Aging Aircraft Task Force), and represent a generally accepted maximum interval of time allowable for all affected airplanes to continue to operate prior to accomplishing the modifications and still maintain an acceptable level of safety. However, paragraph B. of the final rule does provide for approval of adjustments to the compliance time if adequate justifying data is provided.

Another commenter stated that the manhours required to accomplish a modification were based on the manufacturer's estimate and that this operator may require significantly more time to accomplish the modifications; therefore, the commenter requested that the cost estimate be revised. The FAA does not concur. The cost estimate represents the average costs and rates, based on overall industry standards; it cannot be tailored to reflect an individual operator's expenditures.

Another commenter had several comments concerning the validity of existing alternate means of compliances to AD's. The FAA considers that existing alternate means of compliance would still be acceptable.

Various foreign airworthiness authorities stated that (1) the compliance times were arbitrarily chosen, independent of any fatigue history; (2) no mandatory inspections were required for all areas not affected by an existing AD; and (3) no post-modification inspections were proposed.

As for item (1), the FAA does not concur with the suggestion that the compliance times for the modifications were arbitrarily chosen. On the contrary, in developing the appropriate compliance times for this AD action, the FAA, with input from the aviation industry/community, considered not only the degree of urgency associated with addressing the identified unsafe condition, but the practical aspects of the availability of required parts, the time necessary to install the required modifications, and the availability of overhaul facilities to perform the necessary work. Further, fatigue history is always considered when assessing inspection thresholds for problems caused by fatigue. Likewise, repetitive inspection intervals are based on damage tolerance assessments when appropriate.

As for item (2), the FAA does not fully agree. While several of the service bulletins included in Boeing Document D6-38505 are the subject of current existing AD's (which require inspections and optional modifications), other service bulletins are currently under consideration for mandatory action, and will be handled on a case-by-case basis. As was explained in detail in the preamble to the Notice, safety will continue to be maintained by various means currently in place that are considered satisfactory to detect damage prior to the occurrence of an unsafe condition. These include on-going basic maintenance programs, inspections/modifications required by existing AD's, Supplemental Structural Inspection Document programs, and the like.

As for item (3), the FAA has determined that there is no need to stipulate special "post-modification inspections" since the operators' existing on-going inspection programs include such inspections and are acceptable to monitor the affected area.

Accordingly, the FAA has determined that no change to the final rule is warranted based on these comments made by the foreign airworthiness authorities.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the burden on any operator nor increase the scope of the AD.

There are approximately 1500 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 28 airplanes of U.S. registry will be affected by this AD within the initial threshold of 4 years. The cost to modify each airplane is estimated to be $898,070. This cost includes the price of modification kits, which is $324,670 per airplane, and the estimated number of manhours to accomplish the modifications, which is 14,335 manhours at $40 per manhour. It does not include downtime, planning, set up, familiarization, or tool acquisition costs. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $25,145,960 within the initial threshold of 4 years.

Additional airplanes will be affected as they accumulate time-in-service and reach the threshold for modifications.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this actions and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, listed in Boeing Document No. D6-38505, Revision C, dated December 11, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural failure, accomplish the following:

A. Except as provided below, prior to reaching the incorporation thresholds listed in Boeing Document No. D6-38505, Revision C, dated December 11, 1989, "Aging Airplane Service Bulletin Structural Modification Program—Model 737-100/-200/-200C" (hereinafter called "the Document"), or within the next 4 years after the effective date of this AD, whichever occurs later, accomplish the structural modifications listed in section 3 of the Document. Modifications for which the incorporation threshold is identified in the Document as a specific date must be accomplished by that date in lieu of the 4 years specified in this paragraph.

Note: The modifications required by this paragraph do not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for the inspection requirements.

B. An alternate means of compliance or adjustment of the compliance time, which

provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FARs 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The modifications shall be done in accordance with Boeing Document D6-38505, Revision C, dated December 11, 1989, "Aging Airplane Service Bulletin Structrual Modification Program—Model 737-100/-200/-200C." This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington; or at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; or at the Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC.

This amendment becomes effective April 17, 1990.

Issued in Seattle, Washington, on January 16, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-5130 Filed 3-6-90; 11:59 am]

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14 CFR Part 39

[Docket No. 89-NM-68-AD; Amdt. 39-6490]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires incorporation of certain structural modifications. This amendment is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their design life goal. These incidents jeopardized the airworthiness of the affected airplanes. These conditions, if not corrected, could result in a degradation in the structural capabilities of the affected airplanes. This action also reflects FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspection.

DATES: Effective April 17, 1990. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 17, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington; at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Yarges, Airframe Branch, ANM-120S, Seattle Aircraft Certification Office; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 747 series airplanes, which requires incorporation of certain structural modifications, was published in the **Federal Register** on May 23, 1989 (54 FR 22304).

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

The Air Transport Association (ATA) of America commented on behalf of its members. While the ATA supports this program, it raised two primary concerns: First, that all service bulletins be in final form prior to the effective date of the AD; second, that parts are available in order to accomplish the required modifications. The FAA has addressed these two concerns. All associated service bulletins have been released prior to the issuance of this final rule and the manufacturer has confirmed that ample parts will be available to meet the mandatory requirements.

Another commenter requested that FAA Designated Engineering Representatives (DER) at the manufacturer's facility be allowed to approve certain alternate means of compliance to this AD. The FAA does not concur. Airworthiness directives are a primary responsibility of the FAA, and alternate means of compliance must be approved by the Manager of the Seattle Aircraft Certification Office. This function cannot be delegated to a DER. While DER's are authorized to determine whether an alternate design complies with a specific requirement, they are not authorized to make discretionary determinations as to what the applicable requirement is.

Another commenter requested that the rule be revised to allow operators to perform minor deviations from the AD without obtaining FAA approval. The FAA does not concur, because what is "minor" is open to interpretation. The FAA must continue to approve all deviations.

Two commenters requested that the threshold for modification of certain pressurization sensitive structure (e.g., reference Boeing Service Bulletins 747-53-2277, 747-53-3375 and 747-53-2283) be increased for Model 747SR series airplanes. These commenters pointed out that the Model 747SR is operated at typically lower cabin differential pressures and will thereby not be subject to cracking as early as other Model 747's. The airworthiness directives that currently apply to these structures allow the adjustment of compliance times by a factor of 1.2 or 1.3. These commenters requested that the same factors be allowed to adjust the modification thresholds for the pressure sensitive structures for Model 747SR airplanes. The FAA does not concur with the request. The FAA is aware that the operators who initially receive the Model 747SR airplanes are probably operating them at less than the maximum cabin differential pressure. Such operating procedures would allow the modification thresholds for pressure sensitive structure to be increased by some appropriate factor. However, since the Model 747SR can be pressurized to the maximum differential pressure by the present operators, or by anyone who flies these airplanes, the FAA does not consider it appropriate to include in this final rule higher values for these particular thresholds when, in fact, the airplanes might not be operated at some lesser specified values. It is far more appropriate that those operators which can justify a threshold increase present data to the FAA in accordance with the alternate means provision of this rule (paragraph C.) to substantiate any threshold increase. Further, for the reasons explained above, the FAA is