

Airworthiness Directive
This AD has been Cancelled.

Federal Register Information

Header Information

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39 [60 FR 21429 NO. 84 5/2/95]

Docket No. 94-NM-44-AD; Amendment 39-9214; AD 74-08-09 R1

Airworthiness Directives; Transport Category Airplanes

PDF Copy (If Available):

Preamble Information

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD) that is applicable to all transport category airplanes. The existing AD currently requires installation of placards prohibiting smoking in the lavatory and disposal of cigarettes in the lavatory waste receptacles; establishment of a procedure to announce to airplane occupants that smoking is prohibited in the lavatories; installation of ashtrays at certain locations; and repetitive inspections to ensure that lavatory waste receptacle doors operate correctly. That action was prompted by fires occurring in lavatories, which were caused by, among other things, the improper disposal of smoking materials in lavatory waste receptacles. The actions specified by the AD are intended to prevent such fires. This amendment provides for an alternative action regarding the current requirement to install specific placards at certain locations.

EFFECTIVE DATE: June 1, 1995.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Monica Nemecek, Aerospace Engineer, Airframe Branch, ANM-120S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2773; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 74-08-09, amendment 39-1917, which is applicable to all transport category airplanes having one or more lavatories equipped with paper or linen waste receptacles, was published in the Federal Register on November 1, 1994 (59 FR 54535). The action proposed to provide for an alternative action regarding the current requirement to install specific placards at certain locations.

Disposition of comments

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

One commenter supports the proposal.

The FAA responds to additional comments and requests for revision of the proposal as follows:

Request to add inspections of smoke detectors

One commenter requests that the proposal be revised to include an additional requirement for a periodic inspection and test of the lavatory smoke detector. The commenter suggests that such inspections be required either every six months or at the same time as the inspections of the trash receptacle doors are required. This commenter considers that such inspections are necessary because smoke and fire, as a result of smoking materials deposited in lavatories, continue to be a hazard. The commenter points out that, in the span of time since the AD was originally issued in 1974, there have been numerous lavatory fires reported on transport category airplanes; many of these fires were not detected by the smoke detectors, but by passengers and crew. The commenter acknowledges that it is not clear whether the fire detector failed to function in these cases of fire; however, it is clear that the detector failed to perform as intended. Since the National Fire Protection Association recommends inspection and testing of residential smoke detectors because they are subject to failure, the commenter believes that a comparable test and inspection of detectors on airplanes is also warranted.

The FAA does not concur with the commenter's suggestion to revise the proposal. The FAA has issued numerous AD's, applicable to specific aircraft models, whenever an unsafe condition has been identified relative to potential fires in the lavatories. In fact, many AD's as well as many individual operator's maintenance programs already call for repetitive inspections of the smoke detectors located in the lavatories. Notwithstanding these current AD's and practices, the FAA will continue to monitor the situation within the transport fleet and may consider the commenter's comments for possible separate rulemaking action.

Request to revise applicability of AD

One commenter requests that the applicability of the proposal be revised to include only those aircraft types known to be affected by the existing AD's provisions, and to exclude all aircraft that were type certificated after August 6, 1974 (the effective date of AD 74-08-09), when the FAA has confirmed that the approved type design incorporates the provisions intended by AD 74-08-09. As justification for this request, the commenter points out the following:

1. The current applicability of the AD makes it applicable to all transport category airplanes ever built, including those that were type certificated after the effective date of AD 74-08-09. It also encompasses all aircraft certificated under Federal Aviation Regulations (FAR) part 25 (14 CFR part 25) whose type design has originated during the past 20 years. The applicability of the AD appears to be a burdensome action placed on the aviation industry for only a minor FAA administrative convenience.

2. The current "open-ended" applicability of the AD places the manufacturer of airplanes type certificated after August 6, 1974, in a peculiar position: The FAA makes a finding during type certification that, in compliance with FAR 21.21(b)(2), ". . .no feature or characteristic makes it unsafe for the category in which certification is requested;" yet, at the same time, the FAA states that a newly type certificated/manufactured airplane is "unsafe" by the terms of AD 74-08-09.

The FAA does not consider that revising the applicability of this AD, as requested by the commenter, is necessary for the following reasons:

As for Item 1, above, the FAA acknowledges that almost all of the requirements of this AD are similar to other requirements of newly-certified airplanes. However, the FAA does not consider that accomplishment of the requirements of this AD constitutes any additional undue burden on operators. For the most part, operators will be required merely to enter a one-time sign-off in the airplane log to indicate compliance. (The only requirement of this AD that is not similar to any other is the requirement that calls for repetitive inspections of the waste receptacle doors. As is explained later in this preamble, service history data indicates that the 1,000-hour repetitive inspections are necessary and appropriate.) To the extent that the requirements of this AD are similar to those of other rules, their continued presence as part of this AD emphasizes their importance and makes it less likely that they will be overlooked.

Additionally, since the various requirements of this AD were adopted in certification and operating rules at different times and by different amendments to the FAR, it would make the AD unnecessarily complex to create exceptions for those airplanes and operators subject to other requirements.

As for Item 2, above, the FAA does not consider that any manufacturer would be placed in a "peculiar situation," as described by the commenter. During the certification process, the manufacturer will necessarily have to consider the requirements of this AD prior to certification of an airplane, and will eliminate the unsafe condition by complying with the AD; therefore, there will be no feature or characteristic that makes the airplane unsafe as certificated.

Request to include terminating actions for requirements of AD

This commenter also requests that the proposal be revised to provide for "terminating actions" for operators whenever the required ashtrays and placards are installed on the airplane and when the provisions for the recurring inspections are incorporated into the FAA-approved inspection program [required by FAR 91.409 (14 CFR 91.409), "Inspections"]. The commenter contends that, in requiring the continuing inspection, the FAA has "gone counter to the commitment of the Administrator," who stated in the preamble to amendments 21-3 and 39-106, "The agency. . .

will not issue AD's as a substitute for enforcing maintenance rules." Revising the proposal in accordance with the commenter's request, the commenter states that the FAA would "correct its error" with respect to enforcement of maintenance rules.

The FAA does not concur with the commenter's request. First, according to section 39.1 of the FAR (14 CFR 39.1), the issuance of an AD is based on the finding that an unsafe condition exists or is likely to develop in aircraft of a particular type design. The responsibilities placed on the FAA by the Federal Aviation Act do not limit it from making any unsafe condition -- whether resulting from maintenance, design defect, or otherwise -- the proper subject of an AD.

Therefore, regardless of the cause or the source of an unsafe condition, the FAA has the authority to issue an AD when it is found that an unsafe condition is likely to exist or develop on other products of the same type design.

Second, it is within the FAA's authority to issue AD's to require actions to address unsafe conditions that are not otherwise being addressed (or addressed adequately) by normal maintenance procedures. This AD has not been issued as a substitute for enforcement of maintenance rules. On the contrary, it establishes the maintenance rule. Currently, there is no other rule that imposes the 1,000-hour inspection of the waste receptacle doors. Based on in-service history of problems encountered, it is especially important that the requirement for these repetitive inspections continue in this AD in order to ensure that the problem addressed is not reintroduced in the fleet.

As for providing terminating action for the requirements of AD 74-08-09, the FAA has not approved any action or modification that would constitute an appropriate "terminating action." Specifically:

- a. With regard to the required installation of placards and ashtrays, those are one-time actions, requiring no additional "repetitive" installations. Once they are installed, operators merely need to document the appropriate maintenance records to indicate this.
- b. With regard to the required procedure for announcements to aircraft occupants, this, too, would be a one-time action. Once a procedure is established, the operator would need only document the appropriate records to indicate this; no further documentation would be required.
- c. With regard to the required repetitive inspections, data currently available to the FAA indicate that the majority of U.S. operators of transport category airplanes are conducting these inspections every 1,000 hours, as specified by the AD, and some are conducting the inspections more frequently. Many operators have found discrepancies at the 1,000-hour inspection interval. There currently is no in-service data to substantiate that any action or modification exists that would preclude the need for a 1,000-hour inspection. These repetitive inspections are appropriate, since they ensure that any discrepancy will be identified and corrected in a timely manner.

Further, the FAA does not concur with the commenter's request to allow operators to incorporate the provisions for these recurring inspections into the FAA-approved inspection program as "terminating action" for the AD. Incorporating the repetitive inspection program into the

operator's maintenance or inspection program would allow escalation of inspection intervals, which the FAA finds inappropriate without adequate control.

Additionally, while the vast majority of affected U.S.-registered airplanes are operated under FAA-approved maintenance/inspection programs, there are some airplanes that are not so operated, namely, certain airplanes that are excepted from the requirements of FAR part 125 by Section 125.1. Because the applicability of the rule includes all transport airplanes, those "excepted" airplanes would still be subject to the AD's requirements; however, because they are not operated under an FAA-approved maintenance/inspection program, their operators would not be able to comply with an AD that required a revision to that program. Moreover, in accordance with existing bilateral airworthiness agreements with foreign countries, the FAA recognizes that one of the purposes of this AD action is to advise foreign authorities of the addressed unsafe condition, and to provide them with guidance as to appropriate methods for correcting it. Again, while revising the FAA-approved maintenance/inspection programs may be effective for many U.S. carriers, other countries do not regulate carriers in the same way. Specifically, foreign authorities may not have the same regulatory system of "approved maintenance programs" as in the U.S. Since the AD is formulated to address a worldwide system for preventing potential fires, the FAA considers that it would not be appropriate to change the requirement for the inspections as the commenter has requested.

Request to permit removal of ashtrays

One commenter requests that the proposal be revised to allow the removal of lavatory door ashtrays, especially on air carriers that prohibit smoking, or on flights for which smoking is prohibited under the appropriate portions FAR section 252 (14 CFR 252, "Smoking aboard aircraft"). This commenter points out that the existing AD requires that ashtrays be installed, while other parts of the FAR prohibit smoking in the passenger cabin and lavatories for certain flights. This commenter, a U.S. operator, notes that it has, on occasion, experienced delays due to missing lavatory door ashtrays, even though smoking is not permitted during the flight. The commenter recommends that lavatory door ashtrays be considered "passenger convenience items" and, as such, be dispositioned under the provision of the appropriate Minimum Equipment List (MEL).

The FAA does not concur. The requirement for the presence of an ashtray on or near the lavatory door provides a convenient disposal location for cigarettes (or other smoking material), and thereby ensures that there is a place to dispose of such material in the event that the "no smoking" policy is not adhered to. Further, the installation of an ashtray on or near the lavatory door will ensure that uninformed persons who find themselves with lighted smoking materials on the airplane will have an obvious location to dispose of smoking materials before entering the lavatory. Previous experience and reports have shown that there is a high probability that these persons may deposit the lighted smoking material in the lavatory paper or linen receptacle when no safe and convenient place to dispose it exists; such actions can result in an in-flight fire aboard the airplane. Accordingly, while the "no smoking" policy is a positive feature that may contribute to safety, it is not meant to be a substitute for required equipment.

Additionally, the FAA does not concur with the commenter's request to consider ashtrays as "passenger convenience items" that can be dispositioned under the MEL. As explained above,

ashtrays do serve a safety function and, therefore, must be considered required equipment.

Request to revise estimated cost of compliance

One commenter requests that the FAA revise its economic impact estimate relative to the cost of compliance with the AD. This commenter states that FAA's analysis of the cost may be reasonably representative of the recurring inspections currently required, but it does not consider the cost of research and recordkeeping involved when determining whether or not an airplane is fitted with lavatories or receptacles subject to the AD. The commenter contends that research and recordkeeping needed just to confirm that an airplane is not subject to the AD results in costs approximating the 1.5 work hours that the FAA indicates is the time required to accomplish the inspections.

The FAA does not concur with the commenter's request. The applicability statement of the AD clearly limits the AD to those transport category airplanes that have one or more lavatories equipped with paper or linen waste receptacles. If an operator is not certain whether its airplane has lavatories so equipped, it may simply review the type design (drawings) of the airplane to determine this. A one-time check of a drawing to determine whether or not the AD is applicable should not create an undue burden on any operator.

Conclusion

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 as proposed.

Economic impact

Since this action only provides for an alternative method of complying with an existing rule, it does not add any new additional economic burden on affected operators. The current costs associated with this AD are reiterated below for the convenience of affected operators:

The costs associated with the currently required placard installations entail approximately 1 work hour per airplane, at an average labor rate of \$60 per work hour. The cost of required parts is negligible. Based on these figures, the total cost impact of the installation requirements of the AD on U.S. operators is estimated to be \$60 per airplane.

The costs associated with the currently required inspections entail approximately 1.5 work hours per airplane per inspection, at an average labor rate of \$60 per work hour. Based on these figures, the total cost impact of the inspection requirements of this AD on U.S. operators is estimated to be \$90 per airplane per inspection.

Regulatory Impact

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 "significant regulatory

action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39 - AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 - [Amended]

2. Section 39.13 is amended by removing amendment 39-1917, and by adding a new airworthiness directive (AD), amendment 39-9214, to read as follows:

Regulatory Information

74-08-09 R1 TRANSPORT CATEGORY AIRCRAFT: Amendment 39-9214. Docket 94-NM-44-AD. Revises AD 74-08-09, Amendment 39-1917.

Applicability: All transport category airplanes, certificated in any category, that have one or more lavatories equipped with paper or linen waste receptacles.

NOTE: The following is a partial list of aircraft, some or all models of which are type certificated in the transport category and have lavatories equipped with paper or linen waste receptacles:

Aerospatiale Models ATR42 and ATR72 series airplanes;
Airbus Models A300, A310, A300-600, A320, A330, and A340 series airplanes;
Boeing Models 707, 720, 727, 737, 747, 757, and 767 series airplanes;
Boeing Model B-377 airplanes;
British Aircraft Models BAC 1-11 series, BAe-146 series, and ATP airplanes;
CASA Model C-212 series airplanes;
Convair Models CV-580, 600, 640, 880 and 990 series airplanes;
Convair Models 240, 340, and 440 series airplanes;
Curtiss-Wright Model CW 46;
de Havilland Models DHC-7 and DHC-8 series airplanes;
Fairchild Models F-27 and C-82 series airplanes;

Fairchild-Hiller Model FH-227 series airplanes;
Fokker Models F27 and F28 series airplanes;
Grumman Model G-159 series airplanes;
Gulfstream Model 1159 series airplanes;
Hawker Siddeley Model HS-748;
Jetstream Model 4101 series airplanes;
Lockheed Models L-1011, L-188, L-1049, and 382 series airplanes;
Martin Model M-404 airplanes;
McDonnell Douglas Models DC-3, -4, -6, -7, -8, -9, and -10 series airplanes; Model MD-88 airplanes; and Model MD-11 series airplanes;
Nihon Model YS-11;
Saab Models SF340A and SAAB 340B series airplanes;
Short Brothers and Harlin Model SC-7 series airplanes;
Short Brothers Models SD3-30 and SD3-60 series airplanes:

Compliance: Required as indicated, unless accomplished previously.

To prevent possible fires that could result from smoking materials being dropped into lavatory paper or linen waste receptacles, accomplish the following:

(a) Within 60 days after August 6, 1974 (the effective date of amendment 39-1917, AD 74-08-09), or before the accumulation of any time in service on a new production aircraft after delivery, whichever occurs later, except that new production aircraft may be flown in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to a base where compliance may be accomplished, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD:

(1) Install a placard either on each side of each lavatory door over the door knob, or on each side of each lavatory door, or adjacent to each side of each lavatory door. The placards must either contain the legible words, "No Smoking in Lavatory" or "No Smoking;" or contain "No Smoking" symbology in lieu of words; or contain both wording and symbology; to indicate that smoking is prohibited in the lavatory. The placards must be of sufficient size and contrast and be located so as to be conspicuous to lavatory users.

(2) Install a placard on or near each lavatory paper or linen waste disposal receptacle door, containing the legible words or symbology indicating "No Cigarette Disposal."

(b) Within 30 days after August 6, 1974, establish a procedure that requires that no later than a time immediately after the "No Smoking" sign is extinguished following takeoff, an announcement be made by a crewmember to inform all aircraft occupants that smoking is prohibited in the aircraft lavatories; except that, if the aircraft is not equipped with a "No Smoking" sign, the required procedure must provide that the announcement be made prior to each takeoff.

(c) Within 180 days after August 6, 1974, or before the accumulation of any time in service on a new production aircraft, whichever occurs later, except that new production aircraft may be

flown in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to a base where compliance may be accomplished, install a self-contained, removable ashtray on or near the entry side of each lavatory door. One ashtray may serve more than one lavatory door if the ashtray can be seen readily from the cabin side of each lavatory door served.

(d) Within 30 days after August 6, 1974, and thereafter at intervals not to exceed 1,000 hours time-in-service from the last inspection; accomplish the following:

(1) Inspect all lavatory paper and linen waste receptacle enclosure access doors and disposal doors for proper operation, fit, sealing, and latching for the containment of possible trash fires.

(2) Correct all defects found during the inspections required by paragraph (d)(1) of this AD.

(e) Upon the request of an operator, the FAA Principal Maintenance Inspector may adjust the 1,000 hour repetitive inspection interval specified in paragraph (d)(1) of this AD to permit compliance at an established inspection period of the operator if the request contains data to justify the requested change in the inspection interval.

(f) This amendment becomes effective on June 1, 1995.