

Federal Aviation Administration

Airworthiness Directive

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DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration
14 CFR Part 39 [61 FR 32318 NO. 122 06/24/96]

Docket No. 95-NM-233-AD; Amendment 39-9680; AD 74-08-09 R2

RIN 2120-AA64

Airworthiness Directives; Transport Category Airplanes

PDF Copy (If Available):

AGENCY: Federal Aviation Administration, DOT

ACTION: Final rule

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all transport category airplanes, that 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 AD 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 that AD are intended to prevent such fires. This amendment revises the existing AD to allow dispatch relief in the event a lavatory door ashtray is missing.

DATES: Effective July 29, 1996.

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

FOR FURTHER INFORMATION CONTACT: Norman Martenson, Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2113; fax (206) 227-1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 74-08-09 R1, amendment 39-9214 (60 FR 21429, May 2, 1995), which is applicable to all transport category airplanes, was published in the Federal Register on January 19, 1996 (61 FR 1306). AD 74-08-09 R1 currently requires:

1. installation of placards prohibiting smoking in the lavatory and disposal of cigarettes in the lavatory waste receptacles;
2. establishment of a procedure to announce to airplane occupants that smoking is prohibited in the lavatories;

3. installation of ashtrays at certain locations; and
4. repetitive inspections to ensure that lavatory waste receptacle doors operate correctly.

That AD also provides for an alternative action regarding the requirement to install specific placards at certain locations.

The proposal specified the FAA's intent to revise AD 74-08-09 R1 by adding a provision that would allow for dispatch relief in the event a lavatory door ashtray is missing from the airplane.

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

Support for the Proposal

Five commenters support the proposal.

Request to Revise Terminology of Dispatch Relief Provision

One commenter requests that proposed paragraph (d) be revised to change the terminology used in the provision for dispatch relief. The commenter requests that the provision specify the time for continued dispatch in terms of "flight days," rather than merely "days." The commenter states that the definition of "flight day" is recognized by the FAA in documents such as the Master Minimum Equipment List (MMEL), and using this terminology in the proposed rule would further clarify the requirements.

The FAA does not concur. Use of the term "flight day" rather than "(calendar) day" for compliance terms in this AD could delay the re-installation of the ashtray on the airplane for an unduly long period of time. Moreover, the MMEL for most affected transport airplanes specifies "calendar days" in its description of the "Maximum Times Between Deferral and Repair;" therefore, this term used as a compliance time is appropriate and should be familiar to affected operators.

The FAA's intent is that, if the ashtray(s) is removed, the airplane should be allowed to continue to operate for the minimum amount of time that it would take, under normally scheduled operations, to reach a main base where the ashtray can be replaced. The FAA has determined that the terms of the dispatch relief provisions, as proposed, will allow such normal operation to occur (without schedule interruptions) and the ashtray to be replaced in a timely manner.

Request to Revise Number of Days of Dispatch Relief

Several commenters request that the dispatch relief provision of proposed paragraph (d) be revised to account for the various types and configurations of transport aircraft that are affected, and to ensure that no airplane is grounded because of the absence of "a component that does not affect the airworthiness of the airplane."

The commenters point out that, as proposed, the rule would allow operation of a single-lavatory airplane for three days with its only lavatory door ashtray missing. This group of airplanes could include certain Boeing Model 737 airplanes, McDonnell Douglas Model DC-9 airplanes, Fokker Model 100 airplanes, and regional airplanes that seat 100 or fewer passengers. However, other similarly-configured models (i.e., certain Model 737's and Model DC-9's) that have 100 or fewer seats, but are equipped with two lavatories, could not be dispatched if both of the airplane's two lavatory door ashtrays were missing.

The commenters request that the proposal be revised to allow single- or dual-lavatory airplanes to continue to operate for three days if one or both ashtrays are missing. The

commenters assert that operating a dual-lavatory, 100-seat airplane without ashtrays for three days is no less safe than operating a single-lavatory 100-seat airplane that has its only ashtray missing for three days. The commenters maintain that the proposed rule should not discriminate between these two configurations.

Further, the commenters note that airplanes equipped with multiple lavatories (and, thus, multiple lavatory door ashtrays) could not be dispatched if more than one lavatory door ashtray is missing; the commenters contend that this feature of the proposed rule potentially could ground wide-body airplanes such as McDonnell Douglas Model DC-10's, Lockheed Model L-1011's, and Boeing Model 747's, and thereby interrupt flight schedules. These commenters also request that the proposal be revised to provide airplanes with three or more lavatories additional dispatch relief in the event that more than one lavatory door ashtray is missing. For these airplanes, they suggest the following revised wording:

"1. At multiple or cluster lavatories co-located (two or more adjacent lavatories), the airplane may be operated for a period of 10 days if the lavatory door ashtrays are missing, provided that the remaining ashtray(s) can be seen readily from the cabin side of the lavatory door(s) with the missing door ashtray.

2. At single lavatory locations, the airplane may be operated for a period of 3 days if one lavatory door ashtray is missing, provided other lavatory door ashtrays are installed [and can be seen readily from the cabin side of the lavatory door(s) with the missing door ashtray]."

The FAA does not concur with the commenters' requests, and does not consider that additional dispatch relief is appropriate.

First, contrary to the commenters' description of the lavatory door ashtray as a component that does not affect the airworthiness of the airplane, the FAA has determined that the ashtrays serve an important safety function and, therefore, must be considered required equipment. This AD was issued as a result of numerous fires that occurred in the lavatory paper and linen receptacles on transport category airplanes, which were caused by smoking materials deposited by passengers or crew. Such fires can be a significant threat to the safety of all persons on the airplane because of the emission of toxic smoke and the possibility of the fire progressing to critical components. The FAA has determined that the requirements of this AD are necessary in order to ensure adequate, comprehensive fire protection aboard transport category airplanes. The requirement for an ashtray on or near the lavatory door ensures that there is a safe, convenient, and obvious place to dispose of smoking material (especially, in cases where the current regulations imposing a "no smoking policy" aboard the airplane are not adhered to either by passengers, crew, or maintenance personnel).

Second, in developing the time intervals for allowing continued operation of an airplane with fewer than the required number of lavatory door ashtrays, the FAA considered not only the safety implications (associated with operating an airplane without a component that affects the airworthiness of the airplane), but experiences obtained from working both with operators and with the MMEL system. The FAA's reasoning behind the dispatch relief specified in this rule is based on several factors:

1. With respect to airplanes equipped with a single lavatory, which are normally smaller transports that operate on shorter routes, the FAA considers that those airplanes can operate safely in today's environment, without a lavatory door ashtray, for the time that it takes to get the airplane back to a maintenance base for reinstallation of the ashtray. For those airplanes, the FAA generally defines that amount of time as three days.

2. With respect to airplanes equipped with two or more lavatories, which are normally larger transports that operate on longer routes, the FAA considered worst-case situations, for example, where an airplane may be scheduled to do a double or triple turn-around from two international points. In such a situation, it could take as long as 10 days to get the airplane back to its main base where a missing ashtray could be re-installed.

3. Additionally, the 10-day period of dispatch relief for multiple-lavatory airplanes with one ashtray missing is the same interval as the standard definition "Category C" item in the MMEL for repair intervals (relative to inoperative systems or components) for almost all transport category airplanes; Category C is the "category of choice" for approximately 85% to 90% of all items in the MMEL. Therefore, the FAA considers that this time period could be easily managed by air carrier maintenance programs and should not pose a problem for operators.

Third, regarding airplanes equipped with multiple lavatories, the FAA considers that affected operators should examine why more than one lavatory door ashtray could be missing from these airplanes. It is understandable that occasionally, through carelessness, damage, or deliberate pilfering, an ashtray could be removed from an airplane; however, this should be a highly unusual event. Having two (or more) lavatory door ashtrays missing from a single airplane should be extremely remote. If this is occurring regularly, operators should examine their current policy and practices regarding ashtray maintenance.

The FAA finds no reasonable justification for allowing dispatch relief for periods of time longer than those as proposed, or for allowing more than one lavatory door ashtray to be missing on an airplane that is equipped with more than one lavatory. The FAA finds that the dispatch relief provided by this final rule not only will ensure safety, but will impose no undue economic burden on any operator.

Request to Allow Ashtrays to Be Relocated

These same commenters request that the proposal be revised to give operators of larger airplanes the flexibility to move remaining ashtrays to different parts of the cabin if one ashtray is missing.

In response to this request, the FAA points out that paragraph (c) of the AD, as well as part 25 of the Federal Aviation Regulations (FAR) (25 CFR 25), already permit a configuration where one ashtray may serve more than one lavatory door if the ashtray can be seen readily from the cabin side of the lavatory door served. Further, nothing prohibits an operator from moving or relocating ashtrays within the cabin to meet this requirement. Therefore, no revision to the AD is necessary with regard to this request.

Request to Include a Provision for Alternative Methods of Compliance

One commenter requests that the proposal be revised to include a provision that would allow operators to request the use of alternative methods of compliance (AMOC) with the AD. The commenter notes that most other AD's include such a provision, and that the FAA's own policy guidance stipulates that AD's should include an AMOC provision. The commenter requests that the proposal be revised to meet that policy.

The FAA does not concur that an AMOC provision is appropriate for this particular AD. As the commenter correctly points out, the FAA's normal policy (reference FAA Document FAA-AIR-M-8040.1, "Airworthiness Directives") is that an AMOC provision "should be provided for in each AD," and the majority of AD's issued do contain such a provision. For typical AD's, the FAA is not aware, at the time of AD issuance, of the range of alternative methods that may exist for complying with the AD; it is for this reason that including an AMOC provision in those AD's is appropriate.

However, this AD is an exception: It has existed more or less in its current form for over 20 years and, during that time, the FAA has not been presented with a single acceptable alternative method of compliance with it. All suggestions and requests that have been submitted to the FAA (mainly in the form of requests for exemption from the AD requirements) have been found to be unacceptable in that they would provide neither an equivalent nor an acceptable level of safety to that provided by the requirements of the AD itself.

In light of this, the FAA has determined that including an AMOC provision in this AD at this time would not be productive.

The FAA points out that paragraph (f) of the AD does provide operators a means for some alternative actions. It permits an adjustment of the time interval for the required repetitive inspections of the waste receptacle enclosure doors and disposal doors, if data are presented to the FAA to justify such an adjustment. [However, the FAA points out that the majority of U.S. operators of transport category airplanes are conducting these inspections at the specified 1,000-hour interval (some are conducting the inspections more frequently), and many have found discrepancies during the 1,000-hour inspections. In light of this, the FAA continues to conclude that the currently required inspection interval is appropriate, since it ensures that any discrepancy will be identified and corrected in a timely manner.]

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.

Cost 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. In fact, the dispatch relief provided by this AD will allow operators to continue to operate airplanes without the required number of ashtrays for a longer period of time than was previously permitted. This will result in a reduction in costs to affected operators, since it will eliminate potential interruptions in service or special scheduling at maintenance bases that otherwise would be necessary in order to reinstall missing ashtrays.

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 this 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, 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. 106(g), 40113, 44701.

§ 39.13 - [Amended]

2. Section 39.13 is amended by removing amendment 39-9214 (60 FR 21429, May 2, 1995), and by adding a new airworthiness directive (AD), amendment 39-9680, to read as follows:

74-08-09 R2 TRANSPORT CATEGORY AIRCRAFT: Amendment 39-9680. Docket 95-NM-233-AD. Revises AD 74-08-09 R1, Amendment 39-9214.

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

NOTE 1: 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 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 AD 74-08-09, amendment 39-1917), 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. And

(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) Except as provided by paragraph (d) of this AD: 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) The airplane may be operated for a period of 10 days with a lavatory door ashtray missing, provided that no more than one such ashtray is missing. For airplanes on which only one lavatory door ashtray is installed, the airplane may be operated for a period of 3 days if the lavatory door ashtray is missing.

NOTE 2: This AD permits a lavatory door ashtray to be missing, although the FAA-approved Master Minimum Equipment List (MMEL) may not allow such provision. In any case, the provisions of this AD prevail.

(e) Within 30 days after August 6, 1974, and thereafter at intervals not to exceed 1,000 hours time-in-service from the last inspections, 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 (e)(1) of this AD.

(f) Upon the request of an operator, the FAA Principal Maintenance Inspector may adjust the 1,000-hour repetitive inspection interval specified in paragraph (e) 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.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) This amendment becomes effective on July 29, 1996.