

121-213

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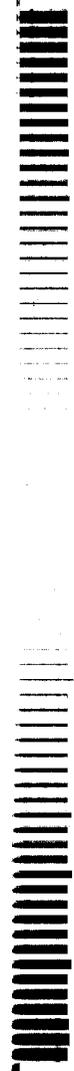
Wednesday
March 7, 1990

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 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 prohibited 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 information 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]

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