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Part III

Department of Transportation

Federal Aviation Administration

**14 CFR Parts 121, 129, and 135
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]

Prohibition Against Smoking

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Disposition of comments.

SUMMARY: This document summarizes and responds to comments received by the FAA concerning the Prohibition Against Smoking Final Rule. Due to a congressional mandate, the rule was effective upon issuance. Because of the early effective date, the FAA did not have sufficient time to issue a notice of proposed rulemaking and receive comments from the public. Therefore, post-effective date comments were invited from the public. The comment period closed on April 23, 1990.

DATES: Effective Date of Final Rule: February 28, 1990.

ADDRESSES: The Prohibition Against Smoking Final Rule docket may be examined at the Federal Aviation Administration, Office of the Chief Counsel, Rules Docket, Room 915-G, 800 Independence Avenue, SW., Washington, DC 20591. The Rules Docket is open weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Mr. 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) 267-8096.

PLEMENTARY INFORMATION:

Background

The FAA issued the Prohibition Against Smoking Final Rule on February 28, 1990, and published it in the *Federal Register* on March 7, 1990 (55 FR 8364). Because Congress required that the prohibition go into effect on February 25, 1990, the FAA rule became effective upon issuance. Post-effective date comments were invited from the public. The comments and the FAA's disposition of the comments are discussed below.

The FAA received six comments: four

supporting the rule, and two opposing the rule. Four comments were from private citizens. The remaining two comments were from an air carrier and a representative of the tobacco industry.

One private citizen commenter opposes the prohibition stating that smoking should be the personal choice of each individual. However, the FAA regulation is the result of a congressional mandate to prohibit smoking during certain flights within the United States. The FAA must implement the congressional mandate and, in so doing, the FAA cannot exclude any flights that the mandate included.

In a comment received from the Tobacco Institute, also opposing the rule, two objections are made. The first objection is that the purported health benefits discussed in the regulatory evaluation accompanying the rule are unsupported and unnecessary to implement the new statute.

The FAA disagrees. Much of the testimony presented on June 22, 1989, to the House Subcommittee on Aviation showed that there are health dangers from exposing nonsmoking passengers and flight attendants to environmental tobacco smoke (ETS). The FAA utilized this testimony in its regulatory evaluation to estimate the health benefits that nonsmoking passengers and flight attendants will experience from the decrease in ETS due to the smoking prohibition. Although the FAA stated that the health benefits were unquantifiable, this does not minimize their value. Instead, it points out that there may be problems in quantifying the dollar value of such benefits. However, based on the testimony presented to Congress and contained in the docket, there is sufficient evidence to support the FAA's position that some health benefits will result from this rulemaking.

The commenter's assertion that a discussion of the health benefits is unnecessary to implement the statute is incorrect. The FAA is required by Executive Order 12291 to present a cost-benefit analysis for its regulations, even where the contents of a particular regulation have been prescribed by an act of Congress. The primary benefit gained from this rulemaking is the reduction in ETS-related health problems; therefore, the benefits must be discussed.

The Tobacco Institute's second objection is that the FAA is encouraging air carriers to decrease the use of ventilation systems on aircraft. The commenter believes that this

encouragement is implied by the agency's statements that air carriers will realize savings through less wear and tear on the ventilation system if smoking is banned.

It appears that the Tobacco Institute has misinterpreted the statement in the regulatory evaluation regarding the lessened wear and tear on aircraft. The FAA is not encouraging air carriers to cut back on the use of aircraft ventilation systems. Instead, when enumerating the benefits of the rule, the FAA stated that in the absence of tobacco smoke, the ventilation system would not have to work as hard and would wear out less often. This promotes savings due to fewer replacement parts needed and lower maintenance costs.

The remaining commenters, three private citizens and one industry organization, support the prohibition; however, all four commenters recommend that the FAA extend the prohibition to the cockpit.

The purpose of this rulemaking is to implement the congressional mandate, which applies to smoking in the passenger cabin or aircraft lavatory. Congress refrained from prohibiting smoking in the cockpit. Therefore, extending the smoking prohibition to include the cockpit is beyond the scope of this rulemaking.

In July 1989, the Office of the Secretary of Transportation asked the FAA to review its policy concerning smoking in the cockpit. Since 1978, it has been the FAA's policy not to ban smoking in the cockpit by regulation. In April 1978, a panel of expert consultants was convened by the National Institutes of Health to study the issue of flight crewmembers smoking in the cockpit. They found that the adverse effects of withdrawal in a chronic smoker are potentially significant and may have a net adverse effect on flight safety because of pilot performance degradation. Since the FAA is unaware of any new information regarding the effects of withdrawal in the habitual smoker, the FAA has asked the Office on Smoking and Health, of the U.S. Public Health Service, to review the 1978 National Institutes of Health study to determine its current validity. This review is currently underway.

In addition, the FAA received a petition for rulemaking from Mr. Nick Pittenger on February 13, 1990, that requests that no person be allowed to smoke on the flight deck without the

permission of each flight deck crewmember. This petition for rulemaking was published in the **Federal Register** on March 22, 1990 (55 FR 10620). The comment period closed on May 26, 1990. All comments received will be fully evaluated before any final action on this petition is taken.

Following a careful evaluation of the comments, the FAA has determined that no change to the rule is warranted at this time.

Issued in Washington, DC, on December 26, 1990.

William C. Withycombe,

Acting Director, Flight Standards Service.

[FR Doc. 90-30586 Filed 12-27-90; 8:45 am]

BILLING CODE 4910-13-M

This action corrects an error in that final rule.

EFFECTIVE DATE: May 15, 1990.

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: On March 7, 1990 (55 FR 8364), the FAA issued a final rule prohibiting smoking in the passenger cabin or lavatory of an airplane during most scheduled flight segments in the United States. Certain sections in parts 121 and 135 were amended and redesignated to implement the smoking prohibition. Former § 135.127(d) was inadvertently deleted. Current § 135.127(d) was never intended to be § 135.127(d). As discussed in the preamble to the current rule, current § 135.127(d) was intended to be § 135.127(e). Therefore, a correction is necessary to reinsert former paragraph (d) into the current rule. As a result of reinstating paragraph (d), current paragraphs (d) and (e) will be redesignated as paragraphs (e) and (f). The omission is corrected below. Correction to § 135.127:

PART 135—[AMENDED]

Section 135.127 is corrected by redesignating paragraphs (d) and (e) as paragraphs (e) and (f) respectively and adding a new paragraph (d) to read as follows:

§ 135.127 Passenger information.

* * * * *

(d) After December 31, 1988, no person may operate an aircraft with a lavatory equipped with a smoke detector unless there is in that lavatory a sign or placard which reads: "Federal law provides for a penalty of up to \$2,000 for tampering with the smoke detector installed in this lavatory."

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Issued in Washington, DC, on May 10, 1990.

Donald P. Byrnes,

Deputy Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 90-11241 Filed 5-14-90; 8:45 am]

BILLING CODE 4910-13-01

14 CFR Part 135

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

Air Carrier Certification and Operations: Smoking Aboard Aircraft; Prohibition Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: On March 7, 1990, the FAA published a final rule to implement the congressionally mandated prohibition against smoking during most scheduled flight segments in the United States.