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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA-2002-11346; Amendment No. 110]

RIN 2120-AH38

Lower Deck Service Compartments on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Aviation Administration amends the airworthiness standards for transport category airplanes concerning lower deck service compartments. This amendment requires that two-way voice communication systems between lower deck service compartments and the flightdeck remain available following loss of the normal electrical power generating system. It also clarifies the requirements for seats installed in the lower deck service compartment. Adoption of this amendment eliminates regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

EFFCTIVE DATE: July 21, 2003 ~~[Insert a date 30 days after the date of publication in the Federal Register.]~~

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SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's web page at http://www.faa.gov/avr/arm/nprm.cfm Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Small Business Regulatory Enforcement Fair ness Act

The Small Business Regulatory Enforcement Fairness Act (SFREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official or the person listed under FOR FURTHER INFORMATION CONTACT. You can find out more about SBREFA on the Internet at our site, http://www.gov/avr/arm/sbrefa.htm. For more information on SBREFA, e-mail us at 9-AWA-SFREFA@faa.gov.

BACKGROUND

What Are the Relevant Airworthiness Standards in the United States?

In the United States, the airworthiness standards for type certification of transport category airplanes are contained in Title 14, Code of Federal Regulations (CFR) part 25. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the appropriate part 25 standards. These

standards apply to airplanes manufactured within the U.S. for use by U.S.-registered operators, and airplanes manufactured in other countries and imported to the U.S. under a bilateral airworthiness agreement.

What Are the Relevant Airworthiness Standards in Europe?

In Europe, the airworthiness standards for type certification of transport category airplanes are contained in Joint Aviation Requirements (JAR)-25, which are based on part 25. These were developed by the Joint Aviation Authorities (JAA) of Europe to provide a common set of airworthiness standards within the European aviation community. Twenty-three European countries accept airplanes type certificated to the JAR-25 standards, including airplanes manufactured in the U.S. that are type certificated to JAR-25 standards for export to Europe.

What is "Harmonization" and How Did it Start?

Although part 25 and JAR-25 are very similar, they are not identical in every respect. When airplanes are type certificated to both sets of standards, the differences between part 25 and JAR-25 can result in substantial additional costs to manufacturers and operators. These additional costs, however, frequently do not bring about an increase in safety. In many cases, part 25 and JAR-25 may contain different requirements to accomplish the same safety intent. Consequently, manufacturers are usually burdened with meeting the requirements of both sets of standards, although the level of safety is not increased correspondingly.

Recognizing that a common set of standards would not only benefit the aviation industry economically, but also maintain the necessary high level of safety, the FAA and the JAA began an effort in 1988 to "harmonize" their respective aviation standards. The goal of the harmonization effort is to ensure that, where possible, standards do not require domestic and foreign parties to manufacture or operate to different standards for each country involved; and the standards adopted are mutually acceptable to the FAA and the foreign aviation authorities.

The FAA and JAA have identified a number of significant regulatory differences between the wording of part 25 and JAR-25. Both the FAA and the JAA consider "harmonization" of the two sets of standards a high priority.

What is ARAC and What Role Does it Play in Harmonization?

After initiating the first steps towards harmonization, the FAA and JAA soon realized that traditional methods of rulemaking and accommodating different administrative procedures was neither sufficient nor adequate to make appreciable progress towards fulfilling the goal of harmonization. The FAA then identified the Aviation Rulemaking Advisory Committee (ARAC) as an ideal vehicle for assisting in resolving harmonization issues, and, in 1992, the FAA tasked ARAC to undertake the entire harmonization effort.

The FAA had formally established ARAC in 1991, to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity (56 FR 2190, January 22, 1991). The FAA sought this advice to develop better rules in less overall time and using fewer FAA resources than previously needed. The committee provides the FAA firsthand information and insight from interested parties regarding potential new rules or revisions of existing rules.

There are 73 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop recommendations for resolving specific airworthiness issues. Tasks assigned to working groups are published in the

Federal Register. Although working group meetings are not generally open to the public, the FAA solicits participation in working groups from interested members of the public who possess knowledge or experience in the task areas. Working groups report directly to the ARAC, and the ARAC must accept a working group proposal before ARAC presents the proposal to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures; nor is the FAA limited to the rule language "recommended" by ARAC. If the FAA accepts an ARAC recommendation, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package is fully disclosed in the public docket.

What Did the FAA Propose?

The FAA proposed to amend § 25.819 by incorporating the "more stringent" requirements of the current JAR standard. The proposed amendment would require that two-way voice communication systems between lower deck service compartments and the flightdeck remain available following loss of the normal electrical power generating system, and seats installed in the lower deck compartment meet the requirements of § 25.785(d).

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA considered two alternatives to this proposal: (1) No change to the existing standards. The FAA did not select this option because it would mean that the standards would continue to be "unharmonized" and manufacturers would continue to meet two different sets of standards when certificating their airplanes, and (2) The JAA could unilaterally adopt the standards of part 25. The FAA did not seriously consider this option, however, because where the part 25 standards are "less stringent," this could potentially mean adopting a lower level of safety.

The FAA considered the proposal, to be the most appropriate method of ensuring that the highest level of safety is achieved and fulfilling the objectives of harmonizing the U.S. and European standards.

Is Existing FAA Advisory Material Adequate?

The FAA does consider that current guidance on this subject is adequate and that additional advisory material is not necessary as a result of this amendment.

What Comments were Received in Response to the Proposal?

Notice of Proposed Rulemaking (NPRM) 02-06, was published in the Federal Register on January 24, 2002 (67 FR 3456). The comment period closed on March 25, 2002. Only one commenter responded to the request for comments. That commenter states that they have no comments at this time.

What Regulatory Analyses and Assessments Has the FAA Conducted?

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. sections 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Agreements Act also requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more annually (adjusted for inflation).

The FAA has determined that this amendment has no substantial costs, and that it is not "a significant regulatory action" as defined in Executive Order 12866, nor "significant" as defined in DOT's Regulatory Policies and Procedures. Further, this amendment does not have a significant economic impact on a substantial number of small entities, reduces barriers to international trade, and does not impose an Unfunded Mandate on state, local, or tribal governments, or on the private sector. The DOT Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the amendment does not warrant a full evaluation, a statement to that effect and the basis for it is included in the amendment. Accordingly, the FAA has determined that the expected impact of this amendment is so minimal (no substantial costs) that the amendment does not warrant a full evaluation. We provide the basis for this determination as follows.

Currently, airplane manufacturers must satisfy both part 25 and the European JAR-25 standards to certificate transport category airplanes in both the United States and Europe. Meeting two sets of certification requirements raises the cost of developing a new transport category airplane often with no increase in safety. In the interest of fostering international trade, lowering the cost of airplane development, and making the certification process more efficient, the FAA, JAA, and airplane manufacturers have been working to create, to the maximum possible extent, a single set of certification requirements accepted in both the United States and Europe. As explained in detail previously, these efforts are referred to as "harmonization."

This amendment revises the FAA requirements for lower deck service compartments on transport category airplanes that are not certified to be occupied during takeoff and landing. As explained previously in this preamble, this amendment revises part 25 to include the following "more stringent" requirements of the JAR standards: (1) § 25.819(b), two-way voice communication systems between lower deck service compartments and the flightdeck remain available following loss of the normal electrical

power generating system; and (2) § 25.819(f), seats installed in the lower deck compartment meet the requirements of § 25.785(d), which include safety belt and either a shoulder harness, and/or energy absorbing rest, and/or elimination of injurious objects in the head strike path.

This amendment results from the FAA's acceptance of recommendations made by ARAC. We have concluded that, for the reasons previously discussed in the preamble, the adoption of the amendment in 14 CFR part 25 is the most efficient way to harmonize these sections and, in so doing, the existing level of safety will be preserved.

There was consensus within the ARAC members, comprised of representatives of the affected industry, that the requirements of the amendment do not impose additional costs on U.S. manufacturers of part 25 airplanes. Concerning the cost impact of complying with the standard, ARAC states there are apparent administrative savings for the relevant airworthiness authorities and indirect savings for the general public. In fact, ARAC believes that the industry would estimate the cost burden being at a neutral level. We have reviewed the cost analysis provided by industry through the ARAC process. Based on this analysis, we consider that a full regulatory evaluation is not necessary.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980, 50 U.S.C. 601-612, as amended, establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant impact on a substantial number of small entities. If the determination is that the rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA considers that this amendment does not have a significant impact on a substantial number of small entities for two reasons. First, the net effect of this amendment is minimum regulatory cost relief. The amendment requires that new transport category airplane manufacturers meet just one certification requirement, rather than different standards for the United States and Europe. Airplane manufacturers already meet or expect to meet this standard as well as the existing 14 CFR part 25 requirement. Second, all U.S. transport category airplane manufacturers exceed the Small Business Administration small-entity criteria of 1,500 employees for airplane manufacturers. The current U.S. part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly-owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation.

Given that this amendment is minimally cost-relieving and that there are no small entity manufacturers of part 25 airplanes, the FAA certifies that this amendment does not have a significant impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this amendment and has determined that it complies with the Act because this rule would use European international standards as the basis for U.S. standards.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. sections 1532-1538, enacted as Public Law 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

This amendment does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any year; therefore, the requirements of the Act do not apply.

What Other Assessments Has the FAA Conducted?

Executive Order 13132, Federalism

The FAA has analyzed this amendment and the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect 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, the FAA has determined that this amendment does not have federalism implications.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this amendment.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this amendment qualifies for a categorical exclusion.

Energy Impact

The energy impact of the amendment has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94-163, as amended (43 U.S.C. section 6362), and FAA Order 1053.1. It has been determined that it is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this amendment applies to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA has determined that there is no justification for applying the amendment differently to intrastate operations in Alaska.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the issue of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25 - AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

2. Amend § 25.819 by revising paragraphs (b) and (f) to read as follows:

§ 25.819 Lower deck surface compartments (including galleys).

* * * * *

(b) There must be a means for two-way voice communication between the flight deck and each lower deck service compartment, which remains available following loss of normal electrical power generating system.

* * * * *

(f) For each occupant permitted in a lower deck service compartment, there must be a forward or aft facing seat which meets the requirements of § 25.785(d), and must be able to withstand maximum flight loads when occupied.

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Aircraft Certification Service