[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 129

Docket No. FAA-2004-17681; Amendment No. 91-283, 121-305, 125-46, 129-39

RIN 2120-AI20

Fuel Tank Safety Compliance Extension (Final Rule) and Aging Airplane Program Update (Request for Comments)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; Request for Comments.

SUMMARY: This action extends the date for operators to comply with the special maintenance program requirements for transport airplane fuel tank systems. This extension is from December 6, 2004 to December 16, 2008. This action is necessary to allow operators enough time, after receipt of fuel tank systems maintenance programs from design approval holders, to incorporate necessary revisions into their maintenance programs.

Besides the compliance date extension, this rule includes an overview of the findings of the FAA's review of our Aging Airplane Program and the additional rulemaking projects we plan because of that review.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

File comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments [identified by Docket Number FAA-2004-17681] using any of the following methods:

- DOT Docket web site: Go to http://dms.dot.gov and follow the instructions for sending your comments electronically.
- Government-wide rulemaking web site: Go to http://www.regulations.gov and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; US Department of Transportation, 400 Seventh Street, S.W., Nassif Building, Room PL-401, Washington, DC 20590-001.
- Fax: 1-202-493-2251.
- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

Privacy: We will post all comments we receive, without change, to http://dms.dot.gov, including any personal information you provide. For more information, see the Privacy Act discussion in the SUPPLEMENTARY INFORMATION section of this document.

Docket: To read background documents or comments received, go to http://dms.dot.gov at any time. You can also go to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mario L. Giordano, FAA, Aircraft Maintenance Division, Flight Standards Service, AFS-300, 800 Independence Avenue, S.W., Washington DC 20591; telephone: (412) 262-9024 (x241); fax: (412) 264-9302, e-mail: Mario.Giordano@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA is adopting this final rule without prior notice and public comment. However, the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979) provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Therefore, we invite interested persons to take part in this rulemaking by filing any written data, views, or arguments they may wish. We also invite comments about environmental, energy, federalism, or international trade impacts that might result from this amendment.

As for the Aging Aircraft Program update, we are providing this mainly for informational purposes. As part of the normal rulemaking process, the public will have an opportunity to comment on the specifics of each proposal under the Aging Aircraft Program at the time we publish the applicable rulemaking documents. However, we also welcome any comments you may have on the general Aging Airplane Program update in this final rule.

For any comments about either the compliance date extension or the Aging Aircraft Program update, please include the regulatory docket or amendment number and send two copies to the address above. We will file all comments received, as well as a

report summarizing each substantive public contact with FAA personnel on this rulemaking, in the public docket. The docket is available for public inspection before and after the comment closing date. The docket number for this rule is FAA-2004-17681.

Privacy Act: Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets. The available information includes the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477-78) or you may visit http://dms.dot.gov.

The FAA will consider all comments received on or before the closing date for comments. We will consider late comments to the extent practicable. We may amend this final rule because of the comments received.

Commenters who want the FAA to acknowledge receiving their comments filed in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA-2004-17681." We will date-stamp the postcard and mail it to you.

Availability of Final Rule

You can get an electronic copy using the Internet by:

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

(2) Visiting the Office of Rulemaking's web page at http://www.faa.gov/avr/arm/index.cfm; or

(3) Accessing the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue S.W, Washington, DC 20591, or by calling 202-267-9680. Please include the docket number.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) 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 about this document may contact their local FAA official, or the person listed under FOR FURTHER INFORMATION CONTACT. You can find out more about SBRFA on the Internet at our site, http://www.gov/avr/arm/sbrefa.htm. For more information on SBREFA, e-mail us 9-AWA-SBREFA@faa.gov.

Background

General

The FAA developed the Aging Airplane Program to addresses structural and non-structural system safety issues that may arise as airplanes age and in response to:

(1) Airplanes being operated beyond their original design service goals;

(2) The 1988 Aloha B737 accident; and

(3) The Aging Airplane Safety Act of 1991.

To address the safety issues raised by the above events, the FAA developed four rulemaking projects. These projects became known collectively as the Aging Airplane Program and are:

(1) The Enhanced Airworthiness Program for Airplane Systems (Notice of Proposed Rulemaking in development);

(2) The Aging Airplane Safety Rule (Interim Final Rule issued on December 6, 2002);

(3) The Widespread Fatigue Damage Program (Notice of Proposed Rulemaking in development); and

(4) The Corrosion Prevention and Control Program (Notice of Proposed Rulemaking issued on October 3, 2002).

Besides the Aging Airplane Program, the FAA issued the Fuel Tank System Safety Rule (Final Rule) on April 19, 2001 in response to certain fuel tank system failures, including the 1996 TWA Flight 800 B747 accident. Since there are interactions between the operational rules of the Fuel Tank System Safety Rule and the rules of the Aging Airplane Program, we included it in the overall review of the Aging Airplane Program.

Review of Aging Airplane Program

The FAA recently performed a comprehensive review of the Aging Airplane Program. The goals of this review were to:

- Identify how to most effectively align the rulemaking initiatives to ensure there are no overlapping or redundant requirements;
- Ensure that design approval holder data supporting operator compliance is available on time; and,

- Ensure that the resulting maintenance requirements allow operators to be more efficient in revising their maintenance programs when addressing multiple, similar initiatives.

During this review, the FAA found that certain compliance dates in the existing rules and the pending rulemaking projects conflict. If not corrected, these conflicting dates would prevent operators from complying with the requirements efficiently during scheduled maintenance. In addition, this conflict would impact our ability to schedule oversight programs to coincide with the operators' scheduled maintenance.

Our review of the Aging Airplane Program also revealed that we need to make certain substantive changes to the focus of and language in some of the individual rulemaking projects. This action is necessary to improve the overall efficiency of the individual rulemaking projects and the Aging Airplane Program as a whole by ensuring that these projects work together.

The FAA expects that the realignment of the compliance dates and other aspects of the Aging Airplane Program will result in:

(1) Enhanced safety by causing inspections to be focused on the same area of an airplane at the same time and by reducing the need to disturb airplane systems repeatedly;

(2) Fewer service disruptions by reducing the number of times an airplane has to be removed from service to perform such inspections; and

(3) Significantly lower compliance costs for operators due to the efficiencies associated with performing multiple inspections at the same time.

To make the Aging Airplane Program realignment possible, the FAA is extending the compliance date for the Fuel Tank Safety operational rules from 2004 to 2008. We are also extending compliance with some aging-related operational rules from 2007 to 2010. The details of these extensions are discussed in more detail later in this rulemaking. However, we want to be clear that we are confident that these extensions will not have a negative impact on safety. The FAA remains committed to actively addressing all fuel tank and aging airplane safety concerns. In the last few years, we have created a safety net of actions that include more than 600 airworthiness directives (ADs) to address specific safety concerns, and several far-reaching initiatives to establish new safety standards for air carrier operations and airplanes. We will continue to use ADs to address any potential aging issues with specific aircraft. In addition, we will also continue to encourage industry to develop and implement programs that support compliance with the Aging Airplane Program initiatives.

First Action to Improve the Aging Airplane Program

During the Aging Airplane Program review, we recognized that the Fuel Tank Safety Rule compliance date of December 6, 2004 presented a problem. The operators need to start immediate action to meet the Fuel Tank Safety Rule requirements by this date but will have difficulty doing so for reasons discussed in more detail below. While the FAA intends to initiate a rulemaking to address those factors making compliance difficult, this rulemaking will not be in place by the existing compliance date. Therefore, we are taking action to correct this by extending the compliance date in this final rule.

This is the first rulemaking arising from the Aging Airplane Program review. While all the details about the FAA's new approach to the Aging Airplane Program are

not developed fully, the FAA understands that industry is eager for information on this new approach. Therefore, we are including an overview of our findings and the additional rulemaking projects that we plan based on the Aging Airplane Program review in this final rule. As these projects develop, we may decide we need to make changes to some aspects of the individual projects described here. The rulemaking document for each project under the Aging Airplane Program will fully discuss our decisions and proposals for that project.

This final rule will first discuss the Fuel Tank Safety Rule compliance date extension. The overview about the Aging Airplane Program will immediately follow, starting in the section below entitled "Review of Aging Airplane Program".

Fuel Tank Safety Rule – Extending Compliance Dates

On April 19, 2001, the FAA issued a final rule entitled, "Transport Airplane Fuel Tank System Design Review, Flammability Reduction, and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). This discussion refers to this as the "Fuel Tank Safety Rule." As stated above, there are interactions between the operational rules of the Fuel Tank Safety Rule and the Aging Airplane Program rules. Therefore, we included these operational rules in our review of the Aging Aircraft Program.

We issued the Fuel Tank Safety Rule to address unforeseen failure modes in fuel tank systems and the lack of specific maintenance procedures that could result in degrading the design safety features intended to preclude ignition of fuel tank vapors.

One part of the Fuel Tank Safety Rule, Special Federal Aviation Regulation (SFAR) 88, applies to design approval holders (i.e., manufacturers and other holders of supplemental type certificates) of certain turbine-powered transport category airplanes,

and any person who modifies these airplanes later. SFAR 88 requires them to perform safety assessments to confirm if the design of the fuel tank system precludes the existence of ignition sources in the fuel tank system. SFAR 88 also requires developing design changes and maintenance and inspection instructions to assure the safety of the fuel tank system.

Other sections of the Fuel Tank Safety Rule (referred to as the "operational rules") requires operators of these airplanes to include fuel tank safety maintenance and inspection instructions in their existing maintenance programs. The requirements of these operational rules address two areas:

(1) The fuel tank systems of the "baseline" airplane (as originally made by the design approval holder); and

(2) The "actual configuration" of the fuel tank systems of each affected airplane (as modified or altered after original manufacture).

The FAA recognizes that operators will have difficulty meeting their obligations before the December 6, 2004 compliance date specified in 14 CFR §§ 91.410(b), 121.370(b), 125.248(b) and 129.32(b) for the following four reasons:

(1) SFAR 88 requires design approval holders to perform complex analyses and to develop programs from those analyses. These safety analyses identified an unanticipated large number of potential ignition sources and safety features for which the design approval holders must develop associated maintenance and inspection tasks. The design approval holders have not yet fully developed these tasks. Consequently, operators cannot develop their maintenance and inspection instructions without this guidance and information from the design approval holders.

(2) When the FAA adopted SFAR 88, we provided guidance on how to perform safety assessments. However, this guidance was not specific enough to help design approval holders' comply with the requirement to develop maintenance programs based on these assessments. Because this type of safety assessment had never been performed, we did not fully recognize the complexity of the assessments and their potential outcomes. In some cases, we could not have developed this guidance on maintenance programs until we had the results of the safety assessments.

(3) The FAA, the design approval holders and the operators did not share a common understanding of our requirements and expectations for developing these maintenance and inspection instructions.

(4) FAA's requirement that maintenance and inspection instructions address the actual configuration of the operators' airplanes resulted in confusion and difficulty among the operators. They did not know to what extent they needed to confirm the actual configuration of their airplanes, including repairs, alterations and modifications, or to evaluate their impact on the safety of the fuel tank system.

Based on the above, the FAA believes that it is not feasible to require compliance with the operational rules by the existing compliance date of December 6, 2004. The FAA considers an extension of this compliance date by about four years appropriate. We based this decision on (i) the scope of work still necessary to develop and set up the programs required by the Fuel Tank Safety Rule's operational rules, (ii) the goal of aligning the compliance dates in all the Aging Airplane Program rulemaking initiatives, and (iii) the effort required of both the FAA and industry to ensure compliance.

Therefore, the FAA is issuing this extension of time for the operating rules in the Fuel Tank Safety Rule immediately. This final rule extends the compliance dates for 14 CFR §§ 91.410(b), 121.370(b), 125.248(b) and 129.32(b), special maintenance program requirements from December 6, 2004 to December 16, 2008.

Extending the compliance dates does not affect the FAA's commitment to identify fuel tank system unsafe conditions and implement airworthiness directives to require corrective action. As described in the preamble of the Fuel Tank Safety Rule, the FAA intends to address unsafe conditions identified in the design holder assessments by issuing airworthiness directives to require corrective actions. Therefore, this extension will not delay correcting existing unsafe conditions. Rather, it will simply allow more time for operators to implement programs that will enable them to prevent other unsafe conditions from developing in the future.

Review of Aging Airplane Program

As discussed above, the FAA performed a comprehensive review of the Aging Airplane Program. Based on this review, the FAA has concluded that:

(1) We need to realign certain compliance dates in the existing rules and pending proposals to be more consistent; and

(2) We need to make certain substantive changes to the focus and direction of some of the individual rulemaking projects to ensure that these projects work together.

Therefore, the FAA has decided to revise the existing rules and pending proposals of the Aging Airplane Program accordingly and to align the compliance schedules as nearly as possible. Besides the extended compliance time adopted in this final rule, the FAA actions that will be affected by these revisions are:

(1) Transport Airplane Fuel Tank System Design Review, Flammability Reduction, and Maintenance and Inspection Requirements Special Federal Aviation Regulation;

(2) Enhanced Airworthiness Program for Airplane Systems;

(3) Aging Airplane Safety Rule;

(4) Widespread Fatigue Damage Program; and

(5) Corrosion Prevention and Control Programs.

We intend to publish separate rulemaking documents soon for each of these actions. As part of the normal rulemaking process the public will have an opportunity to comment on the specifics of each proposal at the time we publish the applicable rulemaking documents. However, we also welcome comments you may have on the general Aging Airplane Program update in this document.

Transport Airplane Fuel Tank System Design Review, Flammability Reduction, and Maintenance and Inspection Requirements

Besides the compliance date extension contained in this final rule, the FAA is considering revising the operational rules of the Fuel Tank Safety Rule to do the following:

(1) Limit the scope of the requirement to assess the "actual configuration" of fuel tank systems and identify clearly the configuration elements that directly affect fuel tank system safety;

(2) Clarify what changes the operators need to make to their maintenance programs;

(3) Clarify the roles and responsibilities of the principal airworthiness inspectors in reviewing and approving the incorporation of the operator's fuel system maintenance program; and

(4) Clarify other terminology.

The EAPAS proposal (discussed below) also affects fuel tank wiring issues. To prevent overlap or conflict with EAPAS, the FAA will propose these changes as a part of that rulemaking.

As previously discussed, the design approval holders did not fully develop the maintenance and inspection tasks that would be used by the operators in making changes to their maintenance programs. Consequently, we will also issue guidance to help ensure the design approval holders are fully aware of what is necessary to show compliance with SFAR 88. We will base this guidance on feedback from both operators and design approval holders. We intend to contact all design approval holders and provide them with necessary information on our expectations for determining what maintenance and inspection tasks SFAR 88 requires and when they must provide these tasks. We will then work with them to ensure their full compliance. This will guarantee that operators have the documents they need to comply with the Fuel Tank Safety Rule's operational rules.

Overall, the FAA' guidance will include developing:

(1) A compliance plan;

(2) A means to oversee the progress towards compliance; and

(3) Possible actions we may take if the design holder does not comply.

Enhanced Airworthiness Program for Airplane Systems (EAPAS)

The FAA intends to develop an NPRM that addresses electrical wiring system malfunctions and wire contamination based on recommendations of the Aging Transport Systems Rulemaking Advisory Committee. Specifically, we are considering requiring design approval holders for transport category airplanes to make changes to existing Instructions for Continued Airworthiness to improve maintenance information for wiring systems. We are also considering requiring operators to incorporate these changes into their regular maintenance programs. We also intend to strengthen design requirements for wire systems by:

(1) Moving existing regulatory references to wiring into a single section of the regulations specifically for wiring; and

(2) Adding new certification rules to ensure the safety of wire systems.

Since the Fuel Tank Safety Rule and the EAPAS proposal have similar elements and operational requirements, we believe it is appropriate to combine the operational requirements of the two programs. This would preclude any redundancies that may currently exist between the two rulemakings if we were to issue them separately.

Aging Airplane Safety Rule

On December 6, 2002, the FAA published an interim final rule with request for comments, referred to as the "Aging Airplane Safety Rule" (67 FR 72726). This final rule requires airplanes used in air carrier operations to undergo inspections and records reviews by the Administrator or a designated representative. These inspections and reviews occur after the aircraft's 14th year in-service and at named intervals after that. These inspections and records reviews will ensure that operators maintain these airplanes' age-sensitive parts and components in an acceptable and timely manner.

This rule also bans operating these airplanes after specified deadlines unless operators include damage-tolerance-based inspections and procedures in their maintenance or inspection programs. The damage-tolerance-based inspections and procedures help to ensure the continued airworthiness of fatigue-sensitive parts and components of an airplane.

In this rule, the FAA stated that we continually seek to find ways to carry out our rules at lower cost without compromising safety and sought comments for that purpose. Industry responded to our request with many comments citing the adverse economic impact of the rule as currently written. We reviewed these comments and determined that changes to the rule would substantially reduce the burden on the industry without compromising the rule's safety objective. These changes would be in the area requiring damage tolerance based inspections and procedures. Specifically, we are considering limiting the applicability of these damage-tolerance requirements to airplanes initially type certificated with 30 or more passenger seats or a payload capacity of 7,500 pounds or more that are:

(1) Transport category airplanes operated by air carriers under 14 CFR Part 121; or

(2) U.S.-registered airplanes operated under 14 CFR Part 129.

The FAA also received many comments recommending that we task the Aviation Rulemaking Advisory Committee (ARAC) to establish guidelines for the development of damage tolerance programs that will support compliance with the rule. We agree with this recommendation and intend to task ARAC. Therefore, we are considering extending the compliance date stated in the final rule from December 5, 2007 to December 20,

2010. This will allow enough time for ARAC to perform this task and for operators to comply with the requirement to include damage tolerance-based inspections in their maintenance program.

The FAA also received comments about the Aging Airplane Safety Rule that sought direct participation by design approval holders to develop the required programs. Without this participation, the operators will have difficulty complying with the rule. Based on these comments, we are considering proposing a new rule to require design approval holders to develop damage tolerance programs that will support compliance with the rule.

We are addressing the comments to the interim final rule. We intend to publish a revised final rule soon. We also intend to publish an NPRM to propose the new requirements for design approval holders.

Widespread Fatigue Damage

The FAA intends to develop an NPRM to require incorporation into the FAA-approved maintenance program of a program to preclude widespread fatigue damage (WFD). This NPRM is based on recommendations from ARAC and results from the concern for the continued operational safety of airplanes that are approaching or have exceeded their expected service life. We are considering imposing a limit on the total flight cycles or hours. To operate an airplane beyond this limit, more inspections, modifications or replacement actions must be incorporated into the operator's maintenance program to preclude widespread fatigue damage. This proposal would ban continued operations unless operators accomplish such action.

This proposal is similar to the Aging Airplane Safety Rule. Complying with both of these operational requirements would depend on design approval holders developing the necessary data and documentation. Therefore, we are also considering proposing a new rule to require design approval holders to develop these data and documents.

Corrosion Prevention and Control Program

The Corrosion Prevention and Control Program (CPCP) NPRM, issued on October 3, 2002 (67 FR 62142), proposes to require that maintenance or inspection programs include FAA-approved corrosion prevention and control programs. This would apply to all airplanes operated under Part 121, all U.S. registered multi-engine airplanes operating under Part 129, and all multiengine airplanes used in scheduled operations under Part 135.

After considering the comments received, the FAA has determined that actions by the industry and the FAA may have made this proposal unnecessary. Therefore, we are considering withdrawing this NPRM.

New Approach for Requirements for Design Approval Holders

As identified in the preceding paragraphs, the FAA is considering proposing new rules to require design approval holders to develop the necessary data and documents to support the operator's compliance with the each of the Aging Airplane Program rulemaking projects. As noted above in our discussion of the Fuel Tank Safety Rule, we implemented design holder requirements through a Special Federal Aviation Regulation (SFAR) to Part 21.

Since that rulemaking action, the FAA determined that for future operational rules where operators must rely on data or documents from design approval holders, we will

mandate that the design approval holders' data or documents be developed by a specified date. For the Aging Airplane Program rulemaking projects and other future rulemaking actions related specifically to continued airworthiness, we decided that the requirements for the design approval holders will be included in a new subpart to Part 25, rather than in an SFAR. This approach will locate all requirements for design approval holders related to the continued airworthiness of transport category airplanes together in one place. We believe this will be a more efficient organization of those regulations.

The FAA plans to create the new subpart and modify the applicability of Part 25 to include requirements for design approval holders as well as applicants for Part 25 design approvals. We will propose those actions in the individual rulemaking documents.

Since the FAA has not previously included design holder continued airworthiness requirements in Part 25, we wanted to highlight this new approach for the public.

Paperwork Reduction Act

There are no new requirements for information collection 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 these regulations.

Good Cause for "No Notice"

Sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedures Act (APA) (5 U.S.C. Sections 553(b)(3)(B) and 553(d)(3)) authorize agencies to dispense with certain notice procedures for rules when they find "good cause" to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

The FAA finds that notice and public comment on this final rule are impracticable. For the APA, "impracticable" means that, if notice and comment procedures were followed, they would defeat the purpose of the rule. As explained previously, the purpose of this final rule is to extend the compliance dates for the operational rules from December 6, 2004, to December 16, 2008. Coordinating and issuing rulemaking documents will take time under current procedures. We cannot issue a notice, receive comments, and issue a final rule before the current compliance date. The operators will also need several months before the compliance date to develop programs to comply with these requirements. Therefore, any delay in issuing this final rule would subject operators to confusion and the expense of trying to comply without the necessary documents from design approval holders. Therefore, it is "impracticable" to provide notice and opportunity to comment.

Good Cause for Immediate Adoption

Section 553(d)(1) allows an agency to make a rule effective immediately if it relieves a restriction. This avoids the 30-day delayed effective date requirement in section 553. Since this final rule relieves a restriction by extending compliance dates, it is effective on publication.

Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes 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 impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531-2533) bans agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards. Where suitable, the Trade Act directs agencies to use those international standards as the basis of U.S. standards. 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. This requirement applies only to rules that include a Federal mandate on State, local, or tribal governments, likely to result in a total expenditure of $100 million or more in any one year (adjusted for inflation).

In conducting these analyses, the FAA determines that this rule:

(1) Has benefits which justify its costs and is not a "significant regulatory action" as defined in the Executive Order and as defined in DOT's Regulatory Policies and Procedures;

(2) Will not have a significant impact on a substantial number of small entities;

(3) Has minimal effects on international trade; and

(4) Does not impose an unfunded mandate on state, local or tribal governments or on the private sector.

Economic Summary

This rule extends the compliance time for operators to comply with the Fuel Tank Safety Rule. If the FAA left the original compliance date in place, some operators' maintenance programs would have been out of compliance. Those operators would have been subject to fines and they would have experienced maintenance schedule disruptions. With more time to comply, however, operators would be able to upgrade their maintenance manuals to incorporate the maintenance programs suggested by the design approval holders. Although we cannot provide a quantitative estimate of the losses resulting from the fines and maintenance schedule disruptions, we believe these would have been significant. Further, there will be a decrease in overall paperwork and costs if this rule has the same compliance date as the other aging aircraft rules. Having a common compliance date would allow operators to most efficiently set up their aging aircraft maintenance programs. Further, operators will be able to take more time to understand the new procedures and provide more training to their mechanics. Thus, we maintain that this rule produces benefits and reduces costs.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 states:

"...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 this principle, the Act requires agencies to seek and consider flexible regulatory proposals and to explain the reason for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

As this rule results in lower costs for all operators, the Administrator certifies the final rule is not expected to have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 bans Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. The Act does not consider legitimate domestic objectives, such as safety, to be unnecessary obstacles. The statute also requires consideration of international standards and, where suitable, that they be the basis for U.S. standards. The FAA has assessed the potential affect of this action and determined that it will have only a domestic impact and, therefore, no affect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Section 202(a) (2 USC 1532) of Title II of the Act requires that each Federal agency, to the extent permitted by law, prepare a written statement assessing the affects 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. The Act considers such a mandate to be a "significant regulatory action." Section 203(a) of the Act (2 U.S.C. 1533) provides that before setting up any regulatory requirements that might significantly or uniquely affect small governments, an agency must have developed a plan under which the agency must:

(1) Provide notice of the requirements to potentially affected small governments, if any;

(2) Enable officials of affected small governments to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates; and,

(3) Inform, educate, and advise small governments on compliance with the requirements.

About the second requirement listed above, Section 204(a) of the Act (2 U.S.C. 1534) requires the Federal agency to develop an effective process to permit elected officers of State, local, and tribal governments (or their designees) to provide the input described.

This action does not contain a significant Federal intergovernmental or private sector mandate because it reduces the costs to operators. Therefore, the requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of

Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. We therefore determined that this final rule does not have federalism implications.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these regulations easier to understand, including answers to the following:

- Are the requirements in the regulation clearly stated?
- Does the regulation contain technical language or jargon that interferes with their clarity?
- Would the regulation be easier to understand if it was divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the regulation?

Please send your comments to the address specified in the ADDRESSES section.

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 final rule qualifies for a categorical exclusion.

Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Parts 91, and 125

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendments

Considering the foregoing, the Federal Aviation Administration amends Parts 91, 121, 125, and 129 of Title 14, Code of Federal Regulations, as follows:

PART 91 – GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

2. Amend §91.410 by revising the first sentence of paragraph (b) to read as follows:

§ 91.410 Special maintenance program requirements.

* * * * *

(b) After December 16, 2008, no person may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958 and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more, unless instructions for maintenance and inspection of the fuel tank system are incorporated into its inspection program. * * *

PART 121 – OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

3. The authority citation for part 121 continues to read:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

4. Amend §121.370 by revising the first sentence of paragraph (b) to read as follows:

§ 121.370 Special maintenance program requirements.

* * * * *

(b) After December 16, 2008, no certificate holder may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958 and either a maximum type certificated passenger capacity of 30 or more, or a maximum

type certificated payload capacity of 7,500 pounds or more, unless instructions for maintenance and inspection of the fuel tank system are incorporated in its maintenance program. * * *

PART 125 - CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

5. The authority citation for part 125 continues to read:

Authority: 49 U.S.C. 106(g), 40113, 44701-44702, 44705, 44710-44711, 44713, 44716-44717, 44722.

6. Amend §125.248 by revising the first sentence of paragraph (b) to read as follows:

§ 125.248 Special maintenance program requirements.

* * * * *

(b) After December 16, 2008, no certificate holder may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958 and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more, unless instructions for maintenance and inspection of the fuel tank system are incorporated in its inspection program. * * *

PART 129 - OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

7. The authority citation for Part 129 continues to read:

Authority: 49 U.S.C. 1372, 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Pub. L. 107–71 sec. 104.

8. Amend § 129.32 by revising the first sentence of paragraph (b) to read as follows:

§ 129.32 Special maintenance program requirements.

* * * * *

(b) For turbine-powered transport category airplanes with a type certificate issued after January 1, 1958 and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more, the program required by paragraph (a) of this section must include instructions for maintenance and inspection of the fuel tank systems no later than December 16, 2008. * * *

Issued in Washington, DC, JUL 2 1 2004

Marion C. Blakey

Administrator

Certified to be a True Copy

John. Allen