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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 125, and 135
Service Difficulty Reports; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, and 135

[Docket No. FAA–2000–7952]

RIN 2120–AI08

Service Difficulty Reports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration is proposing to withdraw a final rule published on September 15, 2000 that would have amended the reporting requirements for certificate holders concerning failures, malfunctions, and defects of aircraft, aircraft engines, systems, and components. The effective date of this final rule has been delayed several times and is now January 31, 2006. We are proposing to withdraw this rule to allow the FAA time to re-examine the service difficulty report (SDR) program based on comments received and other developments since the final rule was published. We are also proposing several amendments that improve the existing SDR program because they did not receive significant comment when proposed in the final rule.

DATES: Send your comments on or before October 14, 2005.

ADDRESSES: You may send comments [identified by Docket Number FAA–2000–7952] 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; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Emilio Estrada, Flight Standards Service, Aircraft Maintenance Division (AFS–300), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–5571.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of 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 h*ttp://dms.dot.gov.*

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by:

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

(2) Visiting the Office of Rulemaking's Web site at *http://www.faa.gov/regulations_policies/;* or

(3) Accessing the Government Printing Office's Web site at *http://www.gpoaccess.gov/fr/index.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.

Statutory Authority

Title 49, 44701 of the United States Code, authorizes the Administrator of the Federal Aviation Administration to prescribe regulations for practices the Administrator finds necessary for safety in air commerce [49 U.S.C. 44701(a)(5)]. Pursuant to that statutory authority, the Administrator has prescribed regulations for certificate holders on the reporting of failures, malfunctions, and defects of aircraft, aircraft engines, systems, and components (commonly called Service Difficulty Reports). These regulations are found at 14 CFR 121.703, 121.704, 121.705, 125.409, 125.410, 135.415, and 135.416. This action proposes amendments to those regulations.

Background

On September 15, 2000, the FAA published a final rule (65 FR 56191) entitled, ''Service Difficulty Reports,'' Amendment Numbers 121–279, 125–35, 135–77, and 145–22. That final rule, applicable to air carriers and certificated domestic and foreign repair station operators, amended the requirements for reporting failures, malfunctions, and defects of aircraft, aircraft engines, systems, and components. In the final rule, the FAA also sought comments on the impact of paperwork and other information collection burdens imposed on the public. The comment period closed on November 14, 2000, and the effective date was scheduled for January 16, 2001.

The FAA received extensive written comments raising concerns with many of the provisions of the new SDR requirements. In response, the FAA held a public meeting about the final rule on December 11, 2000. Participants at that public meeting also raised significant issues concerning the implementation of the final rule.

As a result of the concerns raised at the public meeting and during the comment period, the FAA delayed the effective date of the final rule to July 16, 2001. This effective date was subsequently delayed four more times (66 FR 21626, April 30, 2001/66 FR 58912, November 23, 2001/67 FR 78970,

December 27, 2002/68 FR 75116, December 30, 2003). The current effective date is January 31, 2006. The purpose of these delays was to provide us more time to consider industry's concerns and to revise the final rule where necessary.

Since the publication of the final rule, the FAA amended the SDR requirements for repair stations (66 FR 41117, August 6, 2001). Among other things, this amendment addressed one of the causes of potential duplicate reporting, as a part 145 certificate holder no longer has an independent reporting provision when performing work for a part 121, 125, or 135 certificate holder.

The FAA has also made improvements to the computer software and hardware that monitors SDRs. These changes are designed to facilitate searches of the SDR database and result in more useful results.

The Proposal To Withdraw the Final Rule

The intent of the final rule was to improve the existing SDR program without having a significant adverse impact on industry. The new SDR requirements were designed to correct deficiencies in the SDR program and improve the quality of the data in the SDR database. However, based on the comments received and information gathered at the public meeting and during the comment period, we now realize the final rule may not meet these goals. The concerns raised by industry also highlighted the need to resolve problems with the existing SDR program before increasing the amount and type of data recorded.

The topic that received the most comments was the FAA's economic analysis for the final rule. The commenters are uniform in their contention that the new reporting requirements will greatly increase the costs of the SDR program. The FAA received cost estimates from industry which considerably exceed our own estimates based, in part, on the wide disparity between the industry's and the FAA's evaluation of the number of SDRs resulting from the rulemaking.

While not completely agreeing with the industry's estimate of the increase in the number of reports or the significant increase in costs, we have determined that some of the assumptions we used to predict the number of additional reports could have led industry to overestimate the costs of compliance with this rulemaking. We have reevaluated the final rule in light of the data provided in the comments and have determined that the costs of this rulemaking may be higher than projected. In addition, we acknowledge that populating data collection systems with inappropriate data could have a negative impact on the FAA's ability to identify and collect meaningful safety data on the operation of aircraft.

Since the public meeting, we have considered ways to fix the final rule to maintain its original intent while addressing the concerns raised by industry. During this time period, the Commercial Airplane Certification Process Study (CPS) also issued its findings about the SDR program. The CPS was chartered by the FAA's Associate Administrator for Regulation and Certification in January 2001 to conduct a comprehensive review of the processes and procedures associated with aircraft certification, operations and maintenance. The CPS identified certain underlying deficiencies in the SDR program that should be corrected so data collected may provide the maximum safety benefit. A copy of the CPS report has been placed in the docket for this rulemaking.

Based on the comments received and the CPS findings, the FAA has determined there is a need to enhance the SDR program so it meets the needs of the FAA and industry more efficiently and effectively. Rather than continuing to delay the effective date of the final rule while we address this issue, we believe it is prudent to withdraw the final rule. This approach will prevent uncertainty about the final rule's status and allows us time to thoroughly evaluate and improve the existing SDR program. The effect of a withdrawal will be the retention of the regulation currently in effect.

The Proposal for Amending the Current Rule

The FAA is also proposing to make several minor changes to the existing SDR program. Most of these changes were already incorporated in the final rule we are now proposing to withdraw; we are proposing to proceed with these changes because they did not receive significant comment and will improve the SDR program.

Sections 121.703, 125.409, and 135.415

The FAA is proposing to rename the titles of §§ 121.703, 125.409, and 135.415 to ''Service Difficulty Reports.'' The existing titles reflect the fact that these reports have been called various names over the years by different parties, resulting in some confusion. This proposed change would reflect the most common industry term for SDRs and result in the eventual use of only one consistently used term when referring to them.

Sections 121.703(d), 125.409(b), and 135.415(d)

The FAA is proposing three changes to improve the process of submitting SDRs to the FAA under these sections:

(1) Replacing the terms ''send,'' ''mailed,'' or ''delivered'' with the term ''submit.'' This change would allow for the use of other means, such as electronic transmission, to submit SDRs to the FAA.

(2) Increasing the time for submitting an SDR from 72 hours to 96 hours after an event occurs that requires an SDR. The increased reporting time gives certificate holders additional time to prepare the SDR and should reduce the number of supplemental SDRs that need to be filed. A reduction of supplemental SDRs should reduce the administrative burden on both the FAA and industry.

(3) Changing the location to which the certificate holder must send SDRs. The current rule requires SDRs to be sent directly to the Certificate Holding District Office (CHDO). There, the SDRs are reviewed by the assigned Principal Maintenance Inspector (PMI) and then forwarded to the FAA offices in Oklahoma City, Oklahoma, where all SDRs are entered into the SDR database. The proposal would require the certificate holder to send SDRs directly to our Oklahoma City offices. The PMI would be instructed by internal agency procedures to review the individual SDR for their assigned certificate holder through an internal FAA computer system that would access the SDR database. This proposal would remove the intermediate step of processing SDRs through the PMI, but not relieve the PMI of the responsibility for reviewing them. The proposed change would also facilitate electronic reporting by eliminating the necessity of delivering a copy to the PMI. The certificate holder would retain the option of submitting paper SDRs should it so choose, although the FAA strongly encourages electronic reporting.

Finally, for only § 135.415, the FAA is proposing to remove the provision for aircraft operated where mail is not collected. This was an old provision that was rarely used by the industry. Mail service is available now in most locations and various alternatives to the U.S. Mail exist.

Section 121.703(e)

The proposal would require certificate holders to submit SDRs in a form or format acceptable to the Administrator. Many operators have voluntarily adopted reporting formats compatible with the FAA's electronic systems to simplify their reporting under the

current rule. Electronic submission of SDRs through the FAA Web site is an acceptable format. This provision is intended to assure that, regardless of the method and format chosen for use, the information we receive is readable. However, when using electronic technology, the electronic language used must be one the FAA is capable of reading.

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. Information collection requirements associated with this NPRM have been approved previously by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Number 2120–0663. The proposals in this NPRM do not impose new information collection requirements on certificate holders.

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 has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

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 impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 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 Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) 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 $120.7 million or more annually (adjusted for inflation.)

In conducting these analyses, FAA has determined this proposed rule: (1) Has benefits that justify its costs, is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in Department of Transportation Regulatory Policies and Procedures; (2) would not have a ''significant economic impact on a substantial number of small entities;'' (3) would reduce barriers to international trade; and (4) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket for this rulemaking, are summarized below.

Purpose of This Rulemaking

This proposed rulemaking would withdraw a delayed final rule on Service Difficulty Reports (SDR), but retain several relieving items from that delayed final rule. The FAA is proposing to withdraw the delayed final rule because, after receipt of public comments on that action, the FAA has determined that its cost impact is greater than originally projected.

Total Costs and Benefits of This Rulemaking

Costs

This proposed rule imposes minimal new costs on industry, and results in cost-savings ranging from $16.13 million ($11.33 million, discounted) to $38.96 million ($27.36 million, discounted). This results in a net cost savings to industry ranging from $15.98 million ($11.23 million, discounted) to $38.97 million ($27.37 million, discounted). The impact to the FAA are additional costs of $145,200 ($102,000, discounted) and savings of $9,300 ($6,500, discounted). The FAA has determined this rule to be cost beneficial.

Benefits

Currently, a significant effort is underway to improve the quality of aviation safety data identification and collection. This rulemaking is a component of this effort and proposes changes to improve the existing SDR program. These changes include:

- Extending the reporting time to submit SDRs from 72 hours to 96 hours,
- Requiring certificate holders to submit SDRs directly to a centralized collection point, thus allow the reports to be entered into the SDR database quicker and reduce the administrative workload of the certificate-holding district office (CHDO), and
- Allowing electronic submission of SDR reports.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) 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. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

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 1980 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.

For this rule, the small entity group is considered to be part 121, 125, and 135 certificate holders (North American Industry Classification System [NAICS] 481111). For this analysis, the FAA considers each part 125 and 135 certificate holder to be a small entity, and some of the part 121 and 121/135 certificate holders are also small entities.

These regulations result in cost savings for all certificate holders of between $16.13 million ($11.33 million, discounted) to $38.96 million ($27.36 million, discounted) over the next ten years or, on average, between $1.61 million to $3.90 million per year. Assuming that the cost savings is spread among the types of certificate holders in proportion to the number of SDRs each type generated from January 1, 2002 through August 31, 2004, the average part 121 certificate holder would save between $13,010 and $31,424 a year, the average part 121/135 certificate holder would save between $3,511 and $8,479

a year, the average part 125 certificate holder would save between $16 and $39 a year, and the average part 135 certificate holder would save between $68 and $165 a year. Thus, the economic impact is minimal. Therefore, we certify that this action would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in 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. The FAA has assessed the potential effect of this NPRM and has determined that it would 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. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We 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, and therefore would not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (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.

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 has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

List of Subjects

14 CFR Part 121

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

14 CFR Part 125

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

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

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR parts 121, 125, and 135, as follows:

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

1. The authority citation for part 121 continues to read as follows:

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.

2. Amend § 121.703 to revise the heading and paragraphs (d) and (e) to read as follows:

§ 121.703 Service difficulty reports.

* * * * *

(d) Each certificate holder shall submit each report required by this section, covering each 24-hour period beginning at 0900 local time of each day and ending at 0900 local time on the next day, to the FAA offices in Oklahoma City, Oklahoma. Each report of occurrences during a 24-hour period shall be submitted to the collection point within the next 96 hours. However, a report due on Saturday or Sunday may be submitted on the following Monday, and a report due on a holiday may be submitted on the next work day.

(e) The certificate holder shall submit the reports required by this section on a form or in another format acceptable to the Administrator. The reports shall include the following information:

* * * * *

3. Amend § 121.705 to revise the introductory text to read as follows:

§ 121.705 Mechanical interruption summary report.

Each certificate holder shall submit to the Administrator, before the end of the 10th day of the following month, a summary report for the previous month of:

* * * * *

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

4. The authority citation for part 125 continues to read as follows:

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

5. Amend § 125.409 to revise the heading and paragraph (b) to read as follows:

§ 125.409 Service difficulty reports.

* * * * *

(b) Each certificate holder shall submit each report required by this section, covering each 24-hour period beginning at 0900 local time of each day and ending at 0900 local time on the next day, to the FAA offices in Oklahoma City, Oklahoma. Each report of occurrences during a 24-hour period

shall be submitted to the FAA within the next 96 hours. However, a report due on Saturday or Sunday may be submitted on the following Monday, and a report due on a holiday may be submitted on the next workday.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

6. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

7. Amend § 135.415 to revise the heading and paragraph (d) to read as follows:

§ 135.415 Service difficulty reports.

* * * * *

(d) Each certificate holder shall submit each report required by this section, covering each 24-hour period beginning at 0900 local time of each day and ending at 0900 local time on the next day, to the FAA offices in Oklahoma City, Oklahoma. Each report of occurrences during a 24-hour period shall be submitted to the FAA within the next 96 hours. However, a report due on Saturday or Sunday may be submitted on the following Monday, and a report due on a holiday may be submitted on the next workday.

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Issued in Washington, DC, on September 8, 2005.

James J. Ballough,

Director, Flight Standards Service.

[FR Doc. 05–18176 Filed 9–13–05; 8:45 am]

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