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[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 28109; Notice No. 96-7A]

RIN 2120-AF76

Revisions to Digital Flight Data Recorder Rules

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This document proposes to revise the Federal Aviation Administration's (FAA's) recent Notice of Proposed Rulemaking entitled "Revisions to Digital Flight Data Recorder Rules," that was published July 16, 1996. In this document, the FAA proposes to modify the previously proposed flight data recorder requirements to make them applicable to those airplanes placed on the operations specifications of a U.S. operator after a certain date. This document also proposes a two-year compliance date for certain aircraft that must be retrofitted with flight data recorder equipment as a result of a change in policy announced in the NPRM. The first revision is being proposed to close an unintended loophole in the current regulation that was repeated in the NPRM. The second change is needed to allow operators time to comply with the rule following the change in policy. The FAA is also soliciting additional comment concerning aircraft that should be exempted from the proposed DFDR upgrade.

DEC 30 1996

DATE: Comments on this proposed revision must be received by ~~[insert date 20 days~~

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12-10-96
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~~after date of publication in the Federal Register].~~

ADDRESSES: Comments on this notice should be mailed in triplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-200), Docket No. 28109, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 28109. Comments may also be submitted electronically to the following Internet address: nprmcmts@faa.dot.gov. Comments may be examined in Room 915G weekdays, except on Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Frank Rock, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-9567.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposal in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposal contained in this notice may be changed in light of comments received. All comments received will be available, both before

and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 28109." The postcard will be date-stamped and mailed to the commenter.

Availability of SNPRM's

An electronic copy of this document may be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703-321-3339), the Federal Register's electronic bulletin board service (telephone: 202-512-1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 202-267-5948). A modem and suitable communications software are required.

Internet users may reach the FAA's web page at <http://www.faa.gov> or the Federal Register's webpage at http://www.access.gpo.gov/su_docs for access to recently published rulemaking documents.

Any person may obtain a copy of this SNPRM 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.

Communications must identify the notice number or docket number of this SNPRM.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking (NPRM's) should request from the above office a copy of

Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background and discussion of proposal

On July 16, 1996, the FAA published an NPRM (Notice No. 96-7, 61 FR 37144) entitled "Revisions to Digital Flight Data Recorder Rules." That document proposed that operators be required to record additional parameters of flight data on certain airplanes, and requested public comment. The comment period closed on August 15; the FAA received 21 comments to the proposed rule. Since the closing of the comment period, some additional issues have come to the FAA's attention that are related to the issues addressed in the NPRM but are outside the scope of that document. Accordingly, the FAA is issuing this Supplemental Notice of Proposed Rulemaking to present the new proposals and allow time for public comment.

Aircraft Registered Outside the United States

Current § 135.152(a) requires that airplanes operated under Part 135 that were brought onto the U.S. register after October 11, 1991, be equipped with digital flight data recorders. The particular language "brought onto the U.S. register" was used when the rule was adopted in 1988 as a means to identify those airplanes that would be required to have DFDR's installed. At the time, the FAA had considered whether to require the retrofit of all existing airplanes operating under part 135 with DFDR's or require a retrofit based on a date of manufacture or on some other basis. Based on economic analysis and a recommendation from National Transportation Safety Board personnel, the FAA determined that the "brought onto the U.S. register" language would avoid an expensive retrofit of airplanes already operating in the United States.

The agency also concluded that the "brought onto the U.S. register" language would deter the importation of older non-DFDR equipped airplanes into the United States.

This same language was included in Notice 96-7 as proposed § 121.344a(a) in order to maintain the same applicability for airplanes that will be operated under part 121 as of March 20, 1997, when the "commuter rule" takes effect.

In reviewing Notice 96-7, however, the FAA discovered that it had overlooked one possible effect of the 1988 language -- that Part 135 operators would acquire non-DFDR equipped airplanes that were registered outside the United States and decide not to place them on the U.S. register. These aircraft could be operated as foreign-registered airplanes in accordance with § 135.25, but would not be subject to the DFDR requirements of §135.152. The FAA has determined that there is no justification for excluding these aircraft from the DFDR requirements, considering the agency's policy, as detailed in Notice 96-7, concerning the necessity of upgrading flight data recorders.

Accordingly, the FAA is proposing to change the requirement in current §135.152(a) and in proposed §121.344a(a), by describing the group of airplanes that must be equipped with DFDR's as those that are either brought onto the U.S. register after October 11, 1991, or are foreign-registered and were added to an operator's U.S. operations specifications after October 11, 1991.

This change would have a limited effect on carriers operating under part 135 and those that will operate under part 121. Information available to the FAA indicates that there are no operators currently taking advantage of this rule language by operating foreign-registered airplanes in the United States under part 135.

Accordingly, no costs are expected to result from this change in the rule. The FAA has determined that the change will have only a prospective effect and prevent the domestic operation of foreign-registered airplanes that are not equipped with digital flight data recorders.

Since there are no airplanes currently operating that would be affected by this change in the rule, the FAA has no basis to estimate whether there are airplanes that, in the future, would have been brought into the U.S. for operation under part 135 while maintaining foreign registration. Accordingly, it would be speculative for the FAA to presume a specific number of airplanes and estimate a cost of DFDR retrofit for them because the rule would no longer allow operation without a DFDR.

The FAA solicits comment on the impact of this proposal, and particularly needs to know if there are any foreign-registered airplanes that are not equipped with an appropriate flight data recorder and are operating under the provisions of part 135. The FAA specifically requests data concerning the costs involved with bringing such airplanes into compliance with the flight data recorder requirements as proposed.

Compliance Time for Changed Policy

The NPRM also contained a clarification of the meaning of the phrase "brought onto the U.S. register after October 11, 1991" language as it applies to part 135 aircraft that were removed from the U.S. register and brought back onto the register after October 11, 1991. As explained in the preamble to the original proposed rule, airplanes that were on the register *before* October 11, 1991, but were removed from the register and brought back on *after* October 11, 1991, would have to be retrofitted to be in compliance with § 135.152. A previous FAA interpretation

erroneously concluded that these airplanes were somehow 'grandfathered' (and thus did not have to have flight data recorders installed). This former interpretation was found to be inconsistent with the text of the rule (61 FR at 37154, July 16, 1996).

Several commenters to the NPRM state that because of the previous interpretation, their airplanes that were manufactured before October 11, 1991, did not have to have digital flight data recorders installed, and that to do so now would be expensive. The commenters argue that the date of *manufacture* should be used in determining applicability, rather than the date the aircraft were brought onto the U.S. register, so that older aircraft will not be required to upgrade to digital flight data recorders.

The FAA disagrees. In drafting the NPRM, the FAA considered whether to change the applicability for aircraft operating under part 135, and determined that it was best to maintain the date brought on the U.S. register as the determining factor for applicability of the rule requiring installation of a DFDR. The FAA recognized that whatever date is used (e.g., manufacture or registration) would present a burden to some operators.

Nor does the FAA agree that some airplanes should be allowed to be removed from the U.S. register and be brought back without complying with the regulations in effect at the time of return, simply because they were manufactured prior to October 11, 1991. Since the adoption of the rule, the FAA has always intended that when airplanes are added to the U.S. register, they meet the standards in existence at the time, and that intent is clear from the language of the regulation. When that regulation was adopted in 1988, the determination was made that date of manufacture

would not be used so as not to perpetuate the use (and import) of older aircraft to avoid the installation of digital flight data recorders.

The factors that were discussed in Notice 96-7 concerning the need for flight data information apply to all aircraft. Flight data recorder information is often a critical investigative tool; the current part 135 regulations were issued, and the amendments proposed, to ensure that all aircraft record flight data to the maximum extent feasible. Operators that consider certain aircraft beyond the range of cost-effective retrofit were invited to submit information why those aircraft models should be excluded. As discussed below, such information was received on only one aircraft model.

While the FAA determined that airplanes removed from the U.S. register are not grandfathered and must meet the requirements for flight data recorders, no time for delayed compliance was proposed in Notice 96-7 for aircraft that may have been operating under the old interpretation. To relieve the burden of immediate compliance, the FAA is proposing that operators of these airplanes may take up to two years to install the required flight data recorders. The proposed compliance time of two years may appear inconsistent with the four-year compliance time proposed elsewhere in Notice 96-7, but the four-year compliance time is intended for those airplanes undergoing an upgrade from current requirements. The two-year compliance time proposed here is for certain operators that thought their aircraft were grandfathered to meet the current requirements of part 135, not for installation of an upgrade. The FAA solicits comments that include the number of airplanes that would be affected by this proposed two-year delayed compliance, as well as the

appropriateness of a two-year compliance time.

Aircraft Excluded From Upgrade Requirements

Finally, several comments on the NPRM included airplanes that the commenters thought should be excluded from the applicability of the digital flight data recorder upgrades. Except for the DeHavilland DHC-6 (Twin Otter), however, the comments contained little or no support for the exclusion of these airplanes. As the FAA stated in the NPRM, requests that aircraft to be excluded "should contain a detailed explanation of the reasons why these aircraft should be included on the list [of exclusions], and the number of aircraft that would be affected" (61 FR at 37153). The simple statement that an aircraft is out of production is insufficient for the FAA to make a decision on whether exclusion of the airplane is appropriate. Persons who commented on this issue are invited to resubmit their comments with the necessary explanation, number of airplanes affected, and any retrofit cost data that may be available.

The FAA did not propose an exemption paragraph for part 135 similar to that proposed for part 121 because the FAA has no information suggesting that there are specific airplane types that cannot readily comply with the requirements of § 135.152(a). The only aircraft currently under consideration for exclusion from the rule is the DeHavilland DHC-6 using the information provided in the comments referenced above. The FAA has determined that if there is only one airplane type under consideration for exclusion, it would be more appropriate to provide relief under an exemption pursuant to 14 CFR part 11. However, no determination on this will be made until after the close of the comment period for this supplemental notice,

since the agency is inviting those persons who submitted other airplane types for exclusion to submit more information in support of their comments.

The FAA is also proposing to revise the language of current §§ 135.152(a) and (d), and Appendices B and C of part 135, to reflect that the industry standard for recorders is a 25-hour recorder, rather than the 8-hour recorder currently required. The FAA is unaware of any 8-hour recorder currently being used and has determined that this change would result in no costs to operators. The FAA requests that commenters submit any information to the contrary concerning usage of 8-hour recorders and any costs associated with the proposed change in the standard.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization standards and Joint Aviation Authority regulations, where they exist. Any differences between those documents and these regulations are of a minor, technical nature, and are deemed insignificant. They would not adversely affect harmonization.

Paperwork Reduction Act

No information collection has been proposed.

Regulatory Evaluation Summary

The FAA does not anticipate that the revisions proposed in this SNPRM would alter the costs as developed in Notice 96-7 and has not altered the cost estimates. The reasons for this are twofold. First, regarding the proposed amendment to §§ 121.244a(a) and 135.152(a) to add the date a foreign-registered aircraft is placed on the operations specifications of a carrier, the FAA does not know of any carriers

currently operating foreign-registered airplanes in domestic service. Even if such aircraft are being operated, they would already have been accounted for because the FAA's fleet estimates are derived from domestic air carrier operations specifications. Air carrier data for part 121 operators provided to the FAA by the Air Transport Association accounted for about 80 percent of the domestic fleet; these data were adjusted to reflect the U.S. domestic fleet as estimated by the FAA's Economic Forecast Branch. Similarly, detailed data from the Regional Airline Association (RAA) is presumed to reflect the RAA's fleet estimates based on the operations specification of part 135 operators, and already included any foreign-registered airplanes that may be operated in domestic service.

Second, the cost estimates contained in Notice 96-7 apply only to the upgrade of digital flight data recorders as proposed in that notice. Any costs associated with the installation of the flight data recorders as required under current § 135.152 (and the policy statement discussed) were contained in the original costs estimates generated for that rulemaking in 1988. The policy statement under which some operators did not install flight data recorders was made after that regulation was in place.

Initial Regulatory Flexibility Determination

The FAA has determined that the costs associated with this rule have been considered and discussed in previous rulemaking actions, and therefore has not made a duplicate determination for this SNPRM. Information currently available to the FAA indicates that the revisions proposed in this SNPRM, as described above, do not have any costs associated with them, and seeks any information to the contrary.

International Trade Impact Assessment

The FAA has determined that the proposed amendments pertain to only U.S. operators and will not have an impact on International trade.

Conclusion

For the reasons discussed in the preamble, the FAA has determined that this proposed regulation would be a nonsignificant regulatory action under Executive Order 12866, and is considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects

14 CFR Part 121

Air carriers, Aviation safety, Reporting and recordkeeping requirements,
Transportation

14 CFR Part 135

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 and 135 of the Federal Aviation Regulations 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 USC. 106(g), 40113, 40119, 44101, 44701-44702, 44705, 44709-

44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 44912, 46105.

2. ^{the introductory text of paragraph (a), as proposed in the Federal Register issue of July 16, 1996 (61 FR 37161),} Section 121.344a(a), as proposed in Notice 96-7 is revised to read as follows:

§ 121.344a Digital flight data recorders for 10-19 seat airplanes.

(a) No person may operate a turbine-engine-powered airplane having a passenger seating configuration, excluding any required crewmember seat, of 10 to 19 seats, that was either brought onto the U.S. register after or was registered outside the United States and added to an operator's U.S. operations specifications after October 11, 1991, unless it is equipped with one or more approved flight recorders that use a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. On or before [4 years after the effective date of the final rule], airplanes brought onto the U.S. register or registered outside of the United States and added to an air carrier's operations specifications after October 11, 1991, must comply with either the requirements in this section or the applicable paragraphs in § 135.152 of this chapter. In addition, by [4 years after the effective date of the final rule]--

* * *

PART 135 - OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

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

Authority: 49 USC 106(g), 40113, 44701-44702, 44705, 44709, 44711-44713, 44715-44717, 44722.

4. Section 135.152(a) is revised to read as follows:

13 NMM
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§ 135.152 Flight recorders.

(a) No person may operate a multi-engine, turbine-engine-powered airplane or rotorcraft having a passenger seating configuration, excluding any required crewmember seat, of 10 to 19 seats, that was either brought onto the U.S. register after or was registered outside the United States and added to the operator's U.S. operations specifications after October 11, 1991, unless it is equipped with one or more approved flight recorders that use a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. On or before [2 years after the effective date of the final rule], aircraft brought onto the U.S. register or registered outside of the United States and added to an air carrier's operations specifications after October 11, 1991, must record the parameters specified in either Appendix B or C of this part, as applicable. The parameters must be recorded within the range, accuracy, resolution, and recording intervals as specified. The recorder shall retain no less than 25 hours of aircraft operation.

* * * * *

5. In § 135.152(d), the first sentence is amended by removing the phrase "8 hours" and adding the phrase "25 hours" in its place.

6. In Appendix B to part 135, Airplane Flight Recorder Specifications, in the "Range" column, the first entry is amended by removing the phrase "8 hr minimum" and adding the phrase "25 hr minimum" in its place.

7. In Appendix C to part 135, Helicopter Flight Recorder Specifications, in the "Range" column, the first entry is amended by removing the phrase "8 hr minimum" and adding the phrase "25 hr minimum" in its place.

Issued in Washington, D.C. on December 5, 1996

Elizabeth Yoest
Elizabeth Yoest
Acting Director
Aircraft Certification Service