

Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-2923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: There has been a recent report of cracking of a repaired aft pressure bulkhead on a Boeing Model 747 airplane. This cracking was found to have been the result of the repair not being performed in accordance with the repair drawing.

On August 29, 1985, Boeing Commercial Airplane Company issued a notice to all operators of Model 747 airplanes to report details of any repairs of the aft pressure bulkhead to Boeing for engineering review. On August 30, 1985, the FAA issued General Notice (GENOT) 8320-322, which requested operators to perform a records search to determine if any repairs had been accomplished on aft pressure bulkheads, and to submit this information to Boeing.

A preliminary review of some records and repairs has indicated that not all the repairs to aft pressure bulkheads have been fully documented, not all repairs are airworthy, and previously unknown damage has been found. Improper repair or undetected damage to the aft pressure bulkhead could lead to failure of the bulkhead and depressurization of the airplane.

Since this condition is likely to exist on other airplanes of this model, the FAA has determined that an AD is necessary which requires inspection of the aft pressure bulkhead to ensure that any repair or discrepancies are evaluated, reported, and corrected, if necessary, in accordance with FAA-approved procedures.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2120-0056.

Further, since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is

impracticable for the agency to follow the procedure of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 747 series airplanes, through Line Number 622, certificated in any category. To prevent a condition that would lead to depressurization of the airplane, accomplish the following, unless already accomplished after August 29, 1985:

A. Within 30 days after the effective date of this AD, perform a one-time visual inspection of the aft side of the aft pressure bulkhead for evidence of repairs or damage. Damage is defined in the Structural Repair Manual.

B. Report a complete description of the findings (sketches, photos, or drawings, as necessary) of the inspections required by paragraph A., above, within 30 days after the effective date of this AD to either:

1. The Boeing Commercial Airplane Company, ATTN: Director, 747 Customer Support Engineering, P.O. Box 3707, Seattle, Washington 98124-2207; or

2. Boeing Support Engineering through the Boeing Field Service Representative.

C. If any cracking or punctures are found in the aft pressure bulkhead, repair prior to further flight in accordance with the Structural Repair Manual; Boeing Designated Engineering Representative (DER)-approved data; or data approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Repair all other discrepancies or improper repairs in accordance with the Structural Repair Manual; Boeing DER-approved data; or data approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region. Repairs must be performed in accordance with a

schedule approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Upon the request of an operator, an FAA Principal Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times in this AD to permit compliance at an established inspection period of that operator, if the request contains substantiating data to justify the change for that operator.

F. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received information on inspection procedures from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 19, 1985.

Issued in Seattle, Washington, on October 25, 1985.

Charles R. Foster,
Director, Northwest Mountain Region.
[FR Doc. 85-26062 Filed 10-31-85; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 91

[Docket No. 24636; Amdt. 91-190]

Transponder-On Operation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment requires all aircraft equipped with an operable radar beacon transponder to have the transponder turned on while airborne in the National Airspace System. This action is intended to enhance aviation safety by providing an increased degree of aircraft target visibility to radar controllers in air traffic control (ATC) facilities. A transponder-on environment is expected to help increase controller awareness and facilitate recognition and resolution of potential traffic conflict

situations. This action does not require installation of transponders.

EFFECTIVE DATE: December 2, 1985.

FOR FURTHER INFORMATION CONTACT:

Mr. Gene Falsetti, Airspace and Air Traffic Rules Branch, ATO-230, Airspace-Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On May 8, 1985, the FAA proposed to amend § 91.24 of Part 91 of the Federal Aviation Regulations (FAR) (14 CFR Part 91) to require that while in controlled airspace, each person operating an aircraft equipped with an operable ATC transponder maintained in accordance with § 91.172 of the FAR operate the transponder, including Mode C, if installed, and reply on the appropriate code or as assigned by ATC (50 FR 19381).

The preamble to the rule stated that aircraft positional information which is not readily available should be made available by requiring that transponders be turned on while aircraft are airborne within all controlled airspace. A transponder-on environment would enhance aviation safety by providing an increased degree of aircraft target visibility to radar controllers in ATC facilities and would help increase controller awareness and facilitate recognition and resolution of potential traffic conflict situations.

A transponder-on requirement was considered in the National Airspace Review (NAR). The NAR program is a comprehensive review of airspace use and procedural aspects of the ATC system. The NAR effort is a joint effort of the FAA, the Department of Defense, aviation industry and other government aviation agencies. NAR Task Group 2-3 convened in September 1984, and with the exception of a dissenting view by the Aircraft Owners and Pilots Association (AOPA), recommended adoption of a transponder-on requirement in the National Airspace System. Members of the task group making this recommendation represented the Air Transport Association (ATA), the Regional Airline Association (RAA), the National Air Transportation Association (NATA), the Department of Defense (DOD), the Air Line Pilots Association (ALPA), the Experimental Aircraft Association (EAA), the National Business Aircraft Association (NBAA), the Allied Pilots Association (APA), Transport Canada, AOPA, and the FAA. The NAR Task

Group recommendation was formally approved by the NAR Executive Steering Committee and forwarded to the FAA on December 4, 1984. In addition to the NAR recommendation, the Air Line Pilots Association (ALPA) included a transponder-on requirement in its list of proposed safety recommendations submitted to the FAA in late 1984.

In discussion of the proposal, the preamble noted that the FAA is aware that at certain times and in certain places a concentration of beacon targets could possibly confuse and interfere with the efficiency of ATC rather than assist it. Examples given were such occasions as high density fly-ins, space launches, or such operations as touch-and-go landings. The concentration of targets issue was similarly recognized by the NAR Task Group during its consideration of the proposal. However, the NAR Task Group determined that even if the situation did occur, controllers would prefer to have the aircraft's transponder on, and if situations would exist where the transponder should be off, § 91.24 of the FAR provides ample authority for controllers to so instruct pilots. Aware of a potential problem, the FAA noted in the preamble to the proposal that it was not the intent to create an inflexible requirement that could interfere with the efficiency of the National Airspace System or derogate ATC separation and advisory services. Accordingly, the proposal was designed so that it would not change the current operational environment. Under the proposal, controllers would continue to be able to ask pilots who were in communication with ATC to turn transponder off, or change transponder to "standby" or "low sensitivity." Consistent with the ATC procedures in effect, these actions could be taken to reduce clutter in a multi-target area or "ring around" or other phenomena.

It was also stated that it is not the intent of the proposal to change the application of § 91.172 "ATC Transponder Tests and Inspections." This section states that no person may use an ATC transponder that is specified in Part 125, § 91.24(a), § 121.345(c), § 127.123(b), or § 135.143(c) of this chapter unless within the preceding 24 calendar months, that ATC transponder has been tested and inspected and found to comply with Appendix F of Part 43 and certain other test and inspection requirements.

Comments were invited relative to situations when continued operations of the transponder could result in possible unsafe or inefficient operation of the National Airspace System.

Comments

The FAA received 18 comments in response to the NPRM. Twelve commenters supported the proposal, including the National Transportation Safety Board (NTSB), NBAA, EAA, ATA, RAA, GAMA, ALPA, several airlines including Continental, Piedmont, US Air and CP Air, and an aviation consultant. Six commenters, including four private citizens, the Soaring Society of America, and AOPA opposed the proposed rule.

Two of the individual commenters contended the proposal would benefit only ATC and not the pilot. One commenter stated it would not help to have a transponder turned on and cited the Brownsville, Texas, area as an example because there the radar coverage only goes down to 5,000 feet. Another stated there is no guarantee that operating with the transponder on would enhance safety. The writer noted that ATC frequently calls out traffic that he never finds, and that ATC does not call out traffic that he sees. The same commenter likened the proposed rule to a speed trap which would make the pilot subject to civil penalties and suspension or revocation solely for not turning on a transponder. The same commenter went on to mention that he flew out of Gaithersburg, Maryland, which has a high volume of student training. Often there are five to eight aircraft in the pattern and since the traffic pattern has been raised into controlled airspace, the proposed rule would require all of the aircraft to have their transponders on while shooting takeoffs and landings. Further, only an exemption issued by FAA headquarters could relieve the flight schools from this requirement because their aircraft are not in contact with ATC. The commenter also said that the proposal would exacerbate radar problems of saturation, clutter, and ring around which would be caused primarily by pilots who would not be in radio contact with ATC. It was suggested that if FAA is nonetheless going to adopt the rule, it would need to be amended because it does not explicitly authorize a pilot to turn off a transponder when instructed to do so by ATC. The commenter maintained that the authority of ATC to assign a code does not include "stand-by" or "low" because neither of those is a code.

The Soaring Society of America, Inc., (SSA) stated that it concurs with FAA's intent but does not support the proposal. SSA reasoned that a transponder-on rule would cause pilots to be more careless by inducing them to neglect their primary responsibility of

maintaining a visual watch in favor of relying on the use of transponders as a means of separating visual flight rules (VFR) traffic. SSA said that in its experience, it simply doesn't work.

AOPA did not support the proposal on the following grounds.

1. There is no persuasive evidence that large numbers of operators of aircraft equipped with transponders are not turning them on. It defies logic to assume that an aircraft owner would purchase expensive avionics and then intentionally not use them.

2. There is no assurance that operating with transponder on will enhance safety. Today, controllers who reach a level of traffic saturation selectively suppress the transponder emissions of VFR aircraft to reduce workloads. The proposed rule would encourage that practice.

3. Supplemental information in the proposal admits that concentrations of targets could confuse and interfere with the efficiency of ATC. There is no requirement that aircraft establish or maintain communications with ATC. Mandated operation of transponders increases the opportunity for a number of transponder problems to occur while reducing or eliminating ATC's control or resolution of such problems. In conjunction with this point, AOPA noted two possibilities:

(a) Saturation, clutter, and ring around may be exacerbated with no way for the controller to advise aircraft to stop squawk, squawk stand-by, or change codes.

(b) Erroneous, conflicting, or malfunctioning codes emitted by transponders could not be corrected by the controller and not perceived by the operator.

4. The proposal is unenforceable and contradicts Administration efforts to reduce unnecessary regulation.

Discussion of Comments

In summary, the nonconcurring commenters expressed the following concerns:

1. There is no assurance the rule would enhance aviation safety.

2. The benefits would accrue to ATC, not pilots. The pilot would not see an improvement in traffic advisory service. Further, the pilot would be subject to enforcement penalties for not turning the transponder on.

3. The radar operational environment would be adversely affected as follows:

(a) The rule would not be needed where radar coverage did not exist.

(b) Situations of radar clutter, ring-around, and other undesirable phenomena would increase.

(c) The controller would not be able to control or correct beacon malfunction and saturation problems because radio communications would not exist with many aircraft.

4. As written, the rule provides ATC authority to assign codes only.

5. The rule is unenforceable.

Safety/Benefits

The greater share of safety benefits from a transponder-on rule accrue to pilots and other users of the National Airspace System (NAS). Both visual and instrument flight rules (VFR/IFR) aircraft can be provided a higher degree of safety in the NAS through proper use of a transponder. Transponders substantially increase the capability of radar to "see" an aircraft. Improved visual acquisition enables the controller to quickly determine where potential traffic conflicts may exist. The intent behind the transponder-on rule is to increase controller awareness to facilitate recognition and resolution of potential traffic conflict situations. The acquisition of radar target information is basic to the provision of safety advisories which are a first priority duty of controllers. Therefore the FAA submits that while transponders help to improve the efficiency of ATC safety advisory service, the ultimate beneficiary of improved aviation safety is the airspace user.

The Radar Environment

The arguments raised over the perceived problems that would be encountered by ATC if mandatory use of transponders is initiated are suppositional and without supportive data. In one case, they appear to be contradictory. It was seen as inconceivable that aircraft operators would purchase expensive avionic equipment and not operate it, indicating that transponders were already on. However, the commenter went on to say that if a transponder rule were effected, radar saturation problems would occur, presumably as a result of the operation of transponders which are now left off.

With respect to the alleged radar saturation problem, the FAA noted in Notice No. 85-12 that it was not the intent of the proposal to create an inflexible requirement that could interfere with the efficiency of the National Airspace System or derogate ATC separation and advisory services. Accordingly, the proposal was specifically structured so that the current operational environment would be left intact, including continuation of the ATC deviation authority. The FAA does not expect that the rule would encourage the suppression of select

transponder codes. In those instances when controllers have to selectively suppress certain codes, it is to reduce clutter over a particular area, but only temporarily. Code monitoring procedures will not be changed by this rule. During periods when ring around or excessive VFR target presentations derogate the separation of IFR traffic, the monitoring of the VFR code may be temporarily discontinued.

Code monitoring procedures are implemented independent of radio communications with aircraft. With respect to the issue of radio communications and transponders, controllers have the means to inhibit certain transponder codes, or all if necessary, but to date have no way to "turn on" a transponder in an aircraft with the transponder turned off. An aircraft with a transponder turned on, even when no communications have been established, is receiving a form of service from ATC in that the target is observed, and if necessary the traffic may be provided other aircraft that are in contact with ATC.

Rule Provisions/Effects

Contrary to the concerns of one commenter, the language of the amended rule does provide ATC authority to "stop squawk," "squawk low," or turn transponder off. New subparagraph (c) of § 91.24 provides such broad authority by specifying that each person shall reply on the appropriate code or "as assigned by ATC." Again, the amended rule generates no change in the current practice or procedure.

There were a few comments that the rule would be unenforceable or, conversely, that it would trap pilots into enforcement actions. The purpose of this rule is the enhancement of aviation safety through the provision of an increased degree of aircraft target visibility to ATC radar controllers. The relative ease or difficulty of enforcing the rule was not a significant factor in adopting the rule, although the FAA does not agree that the rule could not be enforced. It is also the FAA's belief that pilots would have no valid reason to object to operating the transponder if such operation would assist ATC in providing improved detection and advisory service and that the effectiveness of the rule will result from voluntary compliance rather than enforcement.

With respect to the rule's effects, another concern was that it would induce pilots to relax their vigilance for other traffic. The FAA appreciates the psychology of this concern. However,

the more obvious capability of the rule to enhance aviation safety outweighs the negative supposition which at best would be difficult to measure. Also, the transponder-on requirement has no effect on the requirement that places ultimate responsibility on the pilot for operation of the aircraft, and thereby, the safety of that flight.

Because this amendment generates no significant energy, cost, or other impacts on aircraft operators, this document involves a rulemaking action which is not a major rule under Executive Order 12291 and is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

Regulatory Evaluation

The requirement that transponders already installed in aircraft be turned on while such aircraft are airborne in the National Airspace System will not have a significant economic impact on airspace users. The rule will not require the purchase, installation, or maintenance of any additional equipment nor will it require any additional recordkeeping. Only an imperceptible amount of additional electricity at negligible cost will be required to keep transponders in operation while the aircraft equipped with them are airborne. Because the impact of this rule is minimal, a full regulatory evaluation has not been prepared. For the same reasons, a transponder-on rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. While FAA has no estimate of the number, if any, of small entities which will be affected by the rule, the impact on individual operators is so minimal as not to meet the threshold of "significant impact" within the meaning of the Regulatory Flexibility Act. Therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 91

Aviation safety, Air traffic control, Airspace, Safety.

The Amendment

Accordingly, Part 91, Subpart A of the Federal Aviation Regulations (14 CFR Part 91), is amended as follows:

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil

Aviation (61 Stat 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 21, 1983).

2. Section 91.24 is revised by redesignating paragraph (c) as paragraph (d), and by adding new paragraph (c) to read as follows:

§ 91.24 ATC Transponder and altitude reporting equipment and use.

(c) *Controlled Airspace, all aircraft, transponder-on operation.* While in controlled airspace, each person operating an aircraft equipped with an operable ATC transponder maintained in accordance with § 91.172 of this Part shall operate the transponder, including Mode C equipment if installed, and shall reply on the appropriate code or as assigned by ATC.

Issued in Washington, DC, on October 29, 1985.

Donald D. Engen,
Administrator.

[FR Doc. 85-26150 Filed 10-31-85; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Rel. Nos. 33-6608; 34-22576; 35-23881; 39-1042; IA-992; IC-14771]

Revision of Rule Concerning Acceptance of Travel Reimbursement

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission has determined that its rule relating to the acceptance of reimbursement for travel expenses from entities tax exempt pursuant to 26 U.S.C. 501(c)(3) is unduly restrictive. It is therefore amending its rules to permit Commission members and employees who participate in conferences and meetings sponsored by entities which are tax exempt pursuant to 26 U.S.C. 501(c)(3) to accept from such entities, under limited circumstances, reimbursement for the actual travel expenses of a spouse, provided the prior approval of the General Counsel is obtained.

EFFECTIVE DATE: November 1, 1985.

FOR FURTHER INFORMATION CONTACT: Myrna Siegel, Ethics Counsel, Office of the General Counsel, Securities and Exchange Commission, Washington, DC 20549, (202) 272-2430.

SUPPLEMENTARY INFORMATION: Prior to 1983, the Commission's regulations

permitted Commission members and employees who participate in programs sponsored by entities designated tax exempt pursuant to 26 U.S.C. 501(c)(3) to accept from such entities reimbursement for travel and subsistence expenses for an accompanying spouse, if the prior approval of the General Counsel was obtained. The amendment announced in this release reinstates that rule.

Discussion

In June 1983, Congress authorized the Commission to accept from non-federal entities payment or reimbursement for expenses incurred by Commission members and staff in connection with participation at educational conferences and meetings sponsored by such entities.¹ On August 23, 1983, the Commission adopted regulations to implement this new statutory authority.²

In order to eliminate real or apparent conflicts of interest, those regulations require all private reimbursement for the expenses of Commission members and staff on official duty time to be accepted by the Commission, not by the individual. Because Congress authorized the Commission to accept reimbursement only for the travel and subsistence expenses of its members and employees, the reimbursement rules generally have the effect of prohibiting a member or employee who is traveling while on official duty from accepting any payment or reimbursement offered by the sponsoring organization for the travel expenses of a spouse. Staff members can, under certain circumstances,³ avoid the effects of this prohibition by taking annual leave to attend the educational program or conference in question. Since Commission members are not subject to any leave system, they are effectively prohibited from accepting reimbursement for a spouse when participating in educational conferences or meetings relating to the functions or responsibilities of the Commission, even when the sponsor is a tax-exempt institution.

Entities, tax exempt pursuant to Section 501(c)(3), that sponsor

¹ Pub. L. No. 98-38, 97 Stat. 205 (1983).

² 48 FR 39215 (August 30, 1983).

³ Employees may accept reimbursement for a spouse or traveling companion only with the prior written approval of the General Counsel. That approval may be given when program participants are expected to engage in social activities. However, reimbursement may not be accepted from entities which do business with the Commission, are regulated by the Commission, are registered with the Commission or have interests which may be substantially affected by the official duties of the employee. Moreover, public disclosure of the amount accepted is required.