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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 34

[Docket No. FAA-2009-0112; Amendment No. 34-4]

RIN 2120-AJ41

Emission Standards for Turbine Engine Powered Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the emission standards for turbine engine powered airplanes to incorporate the standards adopted by the United States Environmental Protection Agency (EPA). This rule also amends certain test procedures for gaseous exhaust emissions, which are based on the standards of the International Civil Aviation Organization (ICAO) for gaseous emissions of oxides of nitrogen (NO_x). This rule will bring the standards of 14 CFR part 34 into alignment with 40 CFR part 87 as required.

DATES: This amendment becomes effective June 29, 2009. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 29, 2009.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule, contact Aimee Fisher, Emissions Division (AEE-300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7705; e-mail: aimee.fisher@faa.gov. For legal questions concerning this rule, contact Karen Petronis (AGC-200), Office of the Chief Counsel, Regulations Division, Federal Aviation

Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3073; e-mail: karen.petronis@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44714, Aviation Fuel Standards. Under that section, the FAA is charged with prescribing standards to control or eliminate aircraft emissions that the Administrator of the Environmental Protection Agency has found to endanger the public health or welfare, pursuant to his authority found in Section 231 of the Clean Air Act (42 U.S.C. 7571). These regulations are within the scope of that authority because we are adopting the standards previously mandated by the EPA.

Background

Section 232 of the Clean Air Act Amendments of 1970 (the Act), 42 U.S.C. 7401 *et seq.*, requires the FAA to issue regulations that ensure compliance with all aircraft emission standards promulgated by the Environmental Protection Agency (EPA) under Section 231 of the Act.

The EPA originally promulgated standards for engine fuel venting emissions, engine smoke emissions, and exhaust gas emissions of unburned hydrocarbons (HC), oxides of nitrogen (NO_x), and carbon monoxide (CO) in 40 CFR part 87. Since the EPA established the first standards in 1973, the FAA has worked with the International Civil Aviation Organization (ICAO) to develop international aircraft exhaust emissions standards for NO_x, CO, HC, and smoke (SN). The FAA added the 1997 EPA standards for NO_x and CO in February 1999 (64 FR 5556, February 3, 1999).

In September 2003, the EPA proposed new standards for engine fuel venting emissions, engine smoke emissions, and exhaust gaseous emissions of NO_x (68 FR 56226, September 30, 2003). The

proposal was designed to align the U.S. emissions standards with those of ICAO.

The EPA adopted the proposed standards in November 2005 (70 FR 69664, November 17, 2005). The National Association of Clean Air Agencies (NACAA) sought review of the EPA's action, arguing that the EPA's interpretation of the Act was impermissible. The EPA had found that the Act does not require the agency to subordinate all other concerns to emissions reduction and reach a "technology-forcing" result. In essence, NACAA argued that the 2005 standards did not require enough reduction in emissions and that the EPA had failed to set a firm timeline for tightening the standards in the future.

On June 1, 2007, the United States Court of Appeals for the District Of Columbia Circuit found in favor of the EPA (489 F.3d 1221). The court accepted the EPA's interpretation of the Act and its responsibilities in setting aircraft emissions standards. With that challenge to the standards no longer at issue, we are amending 14 CFR part 34 to reflect the standards promulgated by the EPA in 2005.

Analysis of Rule as Adopted

Although the language of this amendment is not identical to the comparable sections adopted by the EPA, any differences are solely the result of differences in format between the sets of regulations in 40 CFR and 14 CFR. No changes in the standards were meant nor may any be implied by any differences between the sets of regulations.

Sections 34.64, 34.71, 34.82, and 34.89 of 14 CFR are amended by revising the incorporation by reference to specify that the system and procedures for sampling and measurement of gaseous emissions are those found in ICAO Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, July 1993, through Amendment 3 (March 20, 1997). This amendment also corrects the effective date of Volume II, removes the reference to the FAA Rules Docket Room, and updates the address for ICAO's Document Sales Unit.

The only substantive changes to this regulation are the NO_x standards added in § 34.21(d)(1)(vi). All other changes are reference updates to the newer version of ICAO Annex 16 as noted.

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.

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. We have determined that there is no current or new requirement 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 has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

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

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 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits 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 and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

Rulemaking actions by the FAA usually trigger a full regulatory evaluation of the potential monetary costs that would be imposed and benefits generated (including separate analyses for regulatory flexibility, international trade impact, and unfunded mandates). However, this regulation brings the regulations in 14 CFR into conformity with existing EPA regulations. A full regulatory evaluation is unwarranted because the FAA is not imposing a new rule on the aviation industry. The EPA has accounted for any costs associated with these changes in its rulemaking (70 FR 69664, November 17, 2005).

The FAA has, therefore, determined that this final rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, and is not “significant” as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” 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 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 RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a

substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule revises the emission standards for turbine engine airplanes and test procedures for gaseous exhaust emissions. With this final rule, the FAA adopts a previously approved EPA rule to bring the standards of 14 CFR part 34 into alignment with 40 CFR part 87 as required by law. Therefore, as the acting FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards are not considered unnecessary obstacles to the foreign commerce of the United States, so long as the standards have a legitimate domestic objective, such the protection of safety, and do not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA notes the purpose is to ensure the safety of the American public and has assessed the effects of this rule to ensure it does not exclude imports that meet this objective. As a result, this final rule will impose the same costs on domestic and international entities and thus has a neutral trade impact.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) 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 with the base year 1995) 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 \$136.1 million in lieu of \$100 million. This final rule does not contain such a

mandate. 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 and, therefore, does not have federalism implications.

Environmental Analysis

In accordance with FAA Order 1050.1E, the FAA has determined that this action is categorically excluded from environmental review under section 102(2)(c) of the National Environmental Policy Act (NEPA). This action is categorically excluded under FAA Order 1050.1E, Chapter 3, paragraph 312a, which covers "all FAA actions to ensure compliance with EPA aircraft emissions standards." This rule amends the emission standards for turbine engine powered airplanes, and certain test procedures for gaseous exhaust emissions, to incorporate the standards adopted by the EPA based on the ICAO standards for gaseous emissions of oxides of nitrogen (NO_x). This rule brings FAA regulatory standards for emissions into alignment with EPA emissions standards, as required by law. This action qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation and no extraordinary circumstances exist as prescribed under Chapter 3, paragraph 304 of Order 1050.1E.

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 (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.

Availability of Rulemaking Documents

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

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);

2. Visiting the FAA's Regulations and Policies Web page at http://www.faa.gov/regulations_policies/; or

3. Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending 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 amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted 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 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://DocketsInfo.DOT.gov>.

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. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

Good Cause for Adoption of This Final Rule

This regulation is being promulgated as a final rule without notice and opportunity for prior public comment. The standards adopted in this rule were the subject of full notice and comment rulemaking by the EPA, and were published as amendments to 40 CFR part 87 in 2005. They are already required for aircraft engine certification under those regulations. Accordingly, we have determined that notice and prior public comment has already been accomplished. The FAA has no reason to believe that a request for public comment at this time would result in a receipt of useful information. Opportunity for public comment was provided by the EPA in its 2003 NPRM, and comments received were addressed by that agency.

List of Subjects in 14 CFR Part 34

Air pollution control, Aircraft, Incorporation by reference.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations part 34 as follows:

PART 34—FUEL VENTING AND EXHAUST EMISSION REQUIREMENTS FOR TURBINE ENGINE POWERED AIRPLANES

■ 1. The authority citation for part 34 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*, 7572; 49 U.S.C. 106(g), 40113, 44701-44702, 44704, 44714.

■ 2. Amend § 34.21 to add new paragraph (d)(1)(vi) to read as follows:

§ 34.21 Standards for exhaust emissions.

* * * * *

(d) * * *

(1) * * *

(vi) The emission standards of this paragraph apply as prescribed after December 18, 2005. For engines of a type or model of which the first individual production model was manufactured after December 31, 2003:

(A) That have a rated pressure ratio of 30 or less and a maximum rated output greater than 89 kilonewtons: Oxides of Nitrogen: (19 + 1.6 (rPR)) grams/kilonewtons rO.

(B) That have a rated pressure ratio of 30 or less and a maximum rated output greater than 26.7 kilonewtons but not greater than 89 kilonewtons: Oxides of Nitrogen: (37.572 + 1.6(rPR) - 0.2087(rO)) grams/kilonewtons rO.

(C) That have a rated pressure ratio greater than 30 but less than 62.5, and a maximum rated output greater than 89 kilonewtons: Oxides of Nitrogen (7 + 2(rPR)) grams/kilonewtons rO.

(D) That have a rated pressure ratio greater than 30 but less than 62.5, and a maximum rated output greater than 26.7 kilonewtons but not greater than 89 kilonewtons: Oxides of Nitrogen: (42.71 + 1.4286(rPR) - 0.4013(rO) + 0.00642(rPR x rO)) grams/kilonewtons rO.

(E) That have a rated pressure ratio of 62.5 or more: Oxides of Nitrogen: (32 + 1.6 (rPR)) grams/kilonewtons rO.

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■ 3. Revise § 34.64 to read as follows:

§ 34.64 Sampling and analytical procedures for measuring gaseous exhaust emissions.

The system and procedure for sampling and measurement of gaseous

emissions shall be as specified by in Appendices 3 and 5 to the International Civil Aviation Organization (ICAO) Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, July 1993, effective July 26, 1993, through Amendment 3 (March 20, 1997). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document can be obtained from the International Civil Aviation Organization (ICAO), Document Sales Unit, 999 University Street, Montreal, Quebec H3C 5H7, Canada, phone +1 514-954-8022, or <http://icaodsu.openface.ca/mainpage.ch2>. Copies can be reviewed at the FAA New England Regional Office, 12 New England Executive Park, Burlington, Massachusetts, 781-238-7101, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

■ 4. Revise § 34.71 to read as follows:

§ 34.71 Compliance with gaseous emission standards.

Compliance with each gaseous emission standard by an aircraft engine shall be determined by comparing the pollutant level in grams/kilonewton/thrust/cycle or grams/kilowatt/cycle as calculated in § 34.64 with the applicable emission standard under this part. An acceptable alternative to testing every engine is described in Appendix 6 to ICAO Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, July 1993, effective July 26, 1993, including all amendments through Amendment 3 (March 20, 1997). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document can be obtained from the International Civil Aviation Organization (ICAO), Document Sales Unit, 999 University Street, Montreal, Quebec H3C 5H7, Canada, phone +1 514-954-8022, or <http://icaodsu.openface.ca/mainpage.ch2>. Copies can be reviewed at the FAA New England Regional Office, 12 New England Executive Park, Burlington, Massachusetts, 781-238-7101, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/

code_of_federal_regulations/ibr_locations.html. Other methods of demonstrating compliance may be approved by the FAA Administrator with the concurrence of the Administrator of the EPA.

■ 5. Revise § 34.82 to read as follows:

§ 34.82 Sampling and analytical procedures for measuring smoke exhaust emissions.

The system and procedures for sampling and measurement of smoke emissions shall be as specified by Appendix 2 to ICAO Annex 2 to ICAO Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, July 1993, effective July 26, 1993, through Amendment 3 (March 20, 1997). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document can be obtained from the International Civil Aviation Organization (ICAO), Document Sales Unit, 999 University Street, Montreal, Quebec H3C 5H7, Canada, phone +1 514-954-8022, or <http://icaodsu.openface.ca/mainpage.ch2>. Copies can be reviewed at the FAA New England Regional Office, 12 New England Executive Park, Burlington, Massachusetts, 781-238-7101, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

■ 6. Revise § 34.89 to read as follows:

§ 34.89 Compliance with smoke emission standards.

Compliance with each smoke emission standard shall be determined by comparing the plot of SN as a function of power setting under the applicable emission standard under this part. The SN at every power setting must be such that there is a high degree of confidence that the standard will not be exceeded by any engine of the model being tested. An acceptable alternative to testing every engine is described in Appendix 6 to ICAO Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, July 1993, effective July 16, 1993, including all amendments through Amendment 3 of March 20, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document can be obtained from the International Civil Aviation

Organization (ICAO), Document Sales Unit, 999 University Street, Montreal, Quebec H3C 5H7, Canada, phone +1 514-954-8022, or <http://icaodsu.openface.ca/mainpage.ch2>. Copies can be reviewed at the FAA New England Regional Office, 12 New England Executive Park, Burlington, Massachusetts, 781-238-7101, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Other methods of demonstrating compliance may be approved by the FAA Administrator with the concurrence of the Administrator of the EPA.

Issued in Washington, DC on April 20, 2009.

Lynne A. Osmus,

Acting Administrator.

[FR Doc. E9-9433 Filed 4-27-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30664; Amdt. No. 3319]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 28, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.