

makes the airplane unsafe as certificated.

### **Request To Include Terminating Actions for Requirements of AD**

This commenter also requests that the proposal be revised to provide for "terminating actions" for operators whenever the required ashtrays and placards are installed on the airplane and when the provisions for the recurring inspections are incorporated into the FAA-approved inspection program [required by FAR 91.409 (14 CFR 91.409), "Inspections"]. The commenter contends that, in requiring the continuing inspection, the FAA has "gone counter to the commitment of the Administrator," who stated in the preamble to amendments 21-3 and 39-106, "The agency \* \* \* will not issue AD's as a substitute for enforcing maintenance rules." Revising the proposal in accordance with the commenter's request, the commenter states that the FAA would "correct its error" with respect to enforcement of maintenance rules.

The FAA does not concur with the commenter's request. First, according to § 39.1 of the FAR (14 CFR 39.1), the issuance of an AD is based on the finding that an unsafe condition exists or is likely to develop in aircraft of a particular type design. The responsibilities placed on the FAA by the Federal Aviation Act do not limit it from making any unsafe condition—whether resulting from maintenance, design defect, or otherwise—the proper subject of an AD. Therefore, regardless of the cause or the source of an unsafe condition, the FAA has the authority to issue an AD when it is found that an unsafe condition is likely to exist or develop on other products of the same type design.

Second, it is within the FAA's authority to issue AD's to require actions to address unsafe conditions that are not otherwise being addressed (or addressed adequately) by normal maintenance procedures. This AD has not been issued as a substitute for enforcement of maintenance rules. On the contrary, it establishes the maintenance rule. Currently, there is no other rule that imposes the 1,000-hour inspection of the waste receptacle doors. Based on in-service history of problems encountered, it is especially important that the requirement for these repetitive inspections continue in this AD in order to ensure that the problem addressed is not reintroduced in the fleet.

As for providing terminating action for the requirements of AD 74-08-09, the FAA has not approved any action or modification that would constitute an

appropriate "terminating action." Specifically:

a. With regard to the required installation of placards and ashtrays, those are one-time actions, requiring no additional "repetitive" installations. Once they are installed, operators merely need to document the appropriate maintenance records to indicate this.

b. With regard to the required procedure for announcements to aircraft occupants, this, too, would be a one-time action. Once a procedure is established, the operator would need only document the appropriate records to indicate this; no further documentation would be required.

c. With regard to the required repetitive inspections, data currently available to the FAA indicate that the majority of U.S. operators of transport category airplanes are conducting these inspections every 1,000 hours, as specified by the AD, and some are conducting the inspections more frequently. Many operators have found discrepancies at the 1,000-hour inspection interval. There currently is no in-service data to substantiate that any action or modification exists that would preclude the need for a 1,000-hour inspection. These repetitive inspections are appropriate, since they ensure that any discrepancy will be identified and corrected in a timely manner.

Further, the FAA does not concur with the commenter's request to allow operators to incorporate the provisions for these recurring inspections into the FAA-approved inspection program as "terminating action" for the AD. Incorporating the repetitive inspection program into the operator's maintenance or inspection program would allow escalation of inspection intervals, which the FAA finds inappropriate without adequate control.

Additionally, while the vast majority of affected U.S.-registered airplanes are operated under FAA-approved maintenance/inspection programs, there are some airplanes that are not so operated, namely, certain airplanes that are excepted from the requirements of FAR part 125 by § 125.1. Because the applicability of the rule includes *all* transport airplanes, those "excepted" airplanes would still be subject to the AD's requirements; however, because they are not operated under an FAA-approved maintenance/inspection program, their operators would not be able to comply with an AD that required a revision to that program. Moreover, in accordance with existing bilateral airworthiness agreements with foreign countries, the FAA recognizes that one

of the purposes of this AD action is to advise foreign authorities of the addressed unsafe condition, and to provide them with guidance as to appropriate methods for correcting it. Again, while revising the FAA-approved maintenance/inspection programs may be effective for many U.S. carriers, other countries do not regulate carriers in the same way. Specifically, foreign authorities may not have the same regulatory system of "approved maintenance programs" as in the U.S. Since the AD is formulated to address a worldwide system for preventing potential fires, the FAA considers that it would not be appropriate to change the requirement for the inspections as the commenter has requested.

### **Request To Permit Removal of Ashtrays**

One commenter requests that the proposal be revised to allow the removal of lavatory door ashtrays, especially on air carriers that prohibit smoking, or on flights for which smoking is prohibited under the appropriate portions FAR section 252 (14 CFR 252, "Smoking aboard aircraft"). This commenter points out that the existing AD requires that ashtrays be installed, while other parts of the FAR prohibit smoking in the passenger cabin and lavatories for certain flights. This commenter, a U.S. operator, notes that it has, on occasion, experienced delays due to missing lavatory door ashtrays, even though smoking is not permitted during the flight. The commenter recommends that lavatory door ashtrays be considered "passenger convenience items" and, as such, be dispositioned under the provision of the appropriate Minimum Equipment List (MEL).

The FAA does not concur. The requirement for the presence of an ashtray on or near the lavatory door provides a convenient disposal location for cigarettes (or other smoking material), and thereby ensures that there is a place to dispose of such material in the event that the "no smoking" policy is not adhered to. Further, the installation of an ashtray on or near the lavatory door will ensure that uninformed persons who find themselves with lighted smoking materials on the airplane will have an obvious location to dispose of smoking materials before entering the lavatory. Previous experience and reports have shown that there is a high probability that these persons may deposit the lighted smoking material in the lavatory paper or linen receptacle when no safe and convenient place to dispose it exists; such actions can result in an in-flight fire aboard the airplane. Accordingly, while the "no smoking"