

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 121**

[Docket No. 24792; Admt. No. 121-218]

Protective Breathing Equipment**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule; request for comment.

SUMMARY: This amendment extends the compliance date, from July 31, 1990, to January 31, 1991, by which certificate holders would have to install protective breathing equipment (PBE) for the use of flight crewmembers while on flight deck duty. This amendment is necessary because there are insufficient numbers of PBE units available to meet the needs of all certificate holders by the current compliance date. By extending this compliance date, certificate holders will not be penalized for the current unavailability of sufficient numbers of PBE units and components.

EFFECTIVE DATE: July 30, 1990.
Comments must be received by October 1, 1990.

ADDRESSES: Comments on this amendment may be mailed in duplicate or delivered to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-210), Docket No. 24792, 800 Independence Avenue, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Gary E. Davis, Project Development Branch, AFS-240, Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-8096.

SUPPLEMENTARY INFORMATION:**Background**

The requirements for PBE are prescribed in § 121.337 of the Federal Aviation Regulations (FAR). There are two categories of PBE required. The first category, which is the subject of this amendment, is the equipment used by the flight crewmembers on the flightdeck. This unit may have either a fixed or portable breathing gas supply and must be conveniently located on the flight deck for easy access by each required flight crewmember at his or her assigned duty station. The other category of PBE is a portable unit which is required to provide any crewmember protection while investigating, accessing, and combatting an inflight fire. The current standards for both categories of PBE are set forth in

Amendment No. 121-193, which was issued May 26, 1987, and effective July 6, 1987. PBE units for flight crewmembers on flight deck duty must meet the standards of Technical Standard Order (TSO) C99 or equivalent standards.

The FAA stated in the preamble to Amendment No. 121-193 that TSO-C99 was first issued in June 1983. Prior to the issuance of TSO-C99, there were no specific standards for the approval of PBE beyond those contained in the operation and certification rules of the FAR. After issuing TSO-C99, the FAA tested a number of oxygen mask-smoke goggle combinations used in airplanes required to be equipped in accordance with § 121.337 of the FAR. The tests showed that many of these PBE units did not meet the approval guidelines in TSO-C99. The FAA had determined that certificate holders using these units must replace them with units that meet the TSO-C99 approval guidelines.

The FAA also stated in the preamble to Amendment No. 121-193 that the FAR "now require all certificate holders to furnish approved PBE for their flight crewmembers' use." That statement, however, was ambiguous in that it suggested to some that only newly-installed equipment must meet the approval guidelines of TSO-C99. However, it was intended to mean that all PBE units, including those units previously approved, must meet the approval guidelines of TSO-C99. Thus, previously approved PBE units already in use that did not meet the guidelines in TSO-C99 would have to be replaced. Moreover, a deferred compliance date for this equipment upgrade was not provided; therefore, the compliance date was the effective date of the amendment, July 6, 1987.

The FAA believed that certificate holders had replaced the older flight deck PBE units with equipment meeting the approval requirements of TSO-C99, or their equivalent, as of the effective date of Amendment No. 121-193, July 6, 1987. In early 1990, however, the FAA was advised that many certificate holders had not installed acceptable PBE units for the use of flight crewmembers on flight deck duty. Partially in response to a petition for exemption from Air Transport Association (ATA), the FAA revised the date by which certificate holders would be required to have PBE meeting the TSO-C99 standards installed on flight decks. (Amendment 121-212; February 15, 1990; 55 FR 5548) The revised date, July 31, 1990, was based on the unavailability of parts and components needed to upgrade the PBE units in question to meet the TSO-C99 approval requirements. At the time, the FAA

believed that this additional time of 6 months would provide ample time for vendors to provide sufficient units and for certificate holders to have the units installed.

By letter dated April 19, 1990, Mesaba Aviation, Inc., petitioned the FAA for an exemption from the July 31, 1990, date which would result in a 120-day extension of that date. Mesaba states that it will not be able to obtain PBE units for its flight crew positions before the July 31 compliance date.

By letter dated June 6, 1990, ATA petitioned the FAA for an additional 6-month extension of the compliance date for PBE units to be installed on the flight deck. ATA cites severe backlogs of modifications and a severe shortage of new PBE units to meet the TSO-C99 standard. The ATA states that there are a limited number of major PBE vendors in the United States who are approved by the FAA to modify and produce PBE units and that ordering units from European vendors results in lengthy delays.

By June 11, 1990, the FAA had received 5 additional petitions from certificate holders citing supply problems with vendors as the justification for an extension of the compliance date. Most of these petitioners state that 6 months would be sufficient; however, one petitioner requests 12 months.

General Discussion of the Final Rule

The FAA finds that, due to the lack of available PBE units and replacement parts, the extension of the compliance date requested by ATA and others is justified and in the public interest. Due to the fact that the problem is apparently widespread throughout the air carrier industry, the FAA finds that an amendment to the rule is more appropriate than individual exemptions so that relief is available equally for all affected persons. Based on its own analysis, the FAA has determined that a 6-month delay is appropriate to ensure that all carriers will be able to obtain acceptable PBE units. Therefore, the FAA is amending § 121.337(d) to provide a compliance date of January 31, 1991, for the installation of approved PBE for the use of flight crewmembers at their assigned duty stations.

Interested persons are invited to submit such comments as they may desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator. All

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Comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

Good Cause Justification for Immediate Adoption

This amendment is being adopted without notice and public comment procedure because delay could have a significant impact on passenger and cargo service. The compliance problem is a result of a supply problem beyond the control of the affected certificate holders. The FAA finds that there is not a sufficient number of PBE units within the air carrier industry to supply all of the PBE units needed by certificate holders by the current July 31, 1990, compliance date. Noncompliance, even for a short period of time, would require air carriers to remove all noncomplying airplanes from service until the final rule could be issued. To avoid widespread disruption of passenger and cargo service, the FAA finds that notice and public comment under these circumstances are impracticable.

Accordingly, for the reasons discussed above, I find that notice and public comment procedures are impracticable and contrary to the public interest. In addition, since this amendment relieves a restriction, I find it may be made effective in less than 30 days.

Trade Impact Statement

The FAA finds that this amendment will have no impact on international trade.

Economic Assessment

Because the amendment does not impose any cost to operators, the impact of the delay in compliance is expected

to be minimal. Accordingly, a full Regulatory Evaluation is not warranted.

Federalism Implications

The regulation adopted herein will not have substantial direct effects 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. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have federalism implications requiring the preparation of a Federalism Assessment.

Conclusion

This amendment will not have an economic effect on the public. The extended compliance date will allow air carriers to keep their airplanes operating so that passenger and cargo service will not be disrupted. Therefore, for the reasons discussed above, the FAA has determined that this amendment involves a regulation which is not major under Executive Order 12291 but is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since no small entities would be affected by the rule, it is certified that under the criteria of the Regulatory Flexibility Act the rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. Because of the absence of any costs attendant with the amendment, the FAA has determined that the expected impact of the amendment is so minimal that it does not warrant a full regulatory evaluation.

List of Subjects in 14 CFR Part 121

Air safety, Air transportation, Aviation safety, Drug abuse, Narcotics, Safety, Transportation.

Adoption of the Amendment

Accordingly, part 121 of the Federal Aviation Regulations (14 CFR part 121) is amended as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

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

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983).

2. Section 121.337 is amended by revising paragraph (d)(2) to read as follows:

§ 121.337 Protective breathing equipment.

* * * * *

(d) *Compliance dates.*

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(2) Notwithstanding the provisions of paragraph (a) and (b) of this section, the compliance date for furnishing PBE for use by flight crewmembers while on flight deck duty on pressurized and nonpressurized airplanes is January 31, 1991, except that for nonpressurized cabin airplanes that must be retrofitted with a fixed breathing gas supply for PBE, the compliance date is February 18, 1992.

Issued in Washington, DC, on July 30, 1990.

James B. Busey,
Administrator.

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