

FR 121-220

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 24792; Amdt No. 121-220]

Protective Breathing Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; amendment of effective date and request for comment.

SUMMARY: This amendment revises the compliance date for training air carrier crewmembers in the use of protective breathing equipment (PBE). The compliance date is postponed from January 31, 1990, to July 31, 1992. This amendment is necessary due to a misunderstanding concerning the requirement to fight an actual fire during the firefighting drill required for PBE training. In addition, the amendment will give the FAA time to reconsider and clarify the PBE training requirements.

DATES: This rule is effective December 11, 1990. Comments must be received by February 11, 1991.

ADDRESSES: Comments on this amendment may be mailed in duplicate or delivered to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24792, 800 Independence Avenue, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Donell Pollard, 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 training are contained in § 121.417(c), which was adopted by Amendment 121-193, issued May 26, 1987 (52 FR 20950; June 3, 1987). In the preamble to that amendment, the FAA responded to several commenters who objected to the proposed requirement that crewmembers fight an actual fire during their initial training. These commenters cited the hazards to flight attendants of fighting an actual fire and stated that the use of realistic training aids (simulated fires) would better train flight attendants to cope with actual airplane fires.

The FAA did not agree with these commenters and stated in the preamble to Amendment 121-193 that "Demonstrations and training aids, no matter how realistic, cannot provide the

training benefits and confidence that actual firefighting experience will give to all crewmembers * * *." The FAA noted that this requirement is a one-time exercise for crewmembers and further stated that there is nothing in the rule to preclude carriers from developing recurrent training that uses training aids and instructors to supplement the initial training.

On March 14, 1989, after the rule was issued, the FAA issued Advisory Circular (AC) No. 121-31, Training on Protective Breathing Equipment. The AC described a method of compliance with § 121.417(c) that allowed the use of a simulated fire during the PBE portion of the emergency training. However, the FAA has determined that to comply with § 121.417(c) crewmember trainees must wear the PBE and use the appropriate firefighting equipment while fighting an actual fire. Thus, the AC's method that allows PBE training to be conducted using a simulated fire is inconsistent with the rule language. The FAA has rescinded AC 121-31.

Subsequent to the issuance of Amendment 121-193 and AC 121-31, the FAA has been informed by principal operations inspectors and air carriers that a wide variety of training drills and exercises are actually being utilized to fulfill the training requirements of § 121.417(c). The FAA has discovered, in a sampling of the air carrier industry, that most of these training drills consist of PBE and fire extinguisher equipment operation drills using a variety of simulated fire scenarios rather than a firefighting drill using an actual fire. Therefore, a large number of carriers have not properly complied with this regulation. The FAA believes that this lack of compliance is due to confusion created by the publication of AC 121-31 which provided a method of compliance using a simulated fire during the § 121.417(c) firefighting drill.

After reviewing the rule and advisory circular, the agency has determined that the fire fighting drill requirement in § 121.417(c) should be reconsidered. Although the agency continues to believe that a firefighting drill using an actual fire is essential during crewmember training, it may not be necessary to combine the crewmember's actual firefighting experience with the PBE training. Therefore, the agency intends to review the PBE training requirements to determine whether air carriers should be allowed to use simulated fires as an alternative to actual fires during PBE training.

Because of the lack of compliance with § 121.417(c) due to the confusion created by the publication of AC No. 121-31 and the agency's intent to review

the regulation, the FAA finds that it is in the public interest to postpone the compliance date for 2½ years. Thus, the date by which air carriers must comply with the training requirements in § 121.417(c) is postponed until July 31, 1992.

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 air carrier service. In this case, the compliance problem is a result of a misunderstanding of the requirement to put out an actual fire during the firefighting drill required by § 121.417(c)(1). Thus, air carrier non-compliance is an industry wide problem making the exemption process impractical and rulemaking necessary. However, issuance of a notice of proposed rulemaking would delay the establishment of a new compliance date and perpetuate non-compliance. Continued non-compliance would require air carriers to remove all crewmembers who have not been properly trained from service with the air carrier, which would result in grounding aircraft because of staffing shortages. Furthermore, the FAA has determined that § 121.417(c) should be reviewed and possibly amended. Therefore, to avoid widespread disruption of air carrier service and to allow the agency time to review the training requirements, the FAA finds that the compliance date should be postponed until July 31, 1992. Accordingly, I find that notice and public procedure 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.

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, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

Trade Impact Statement

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

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Economic Assessment

This spot amendment does not impose any costs to air carriers. The cost for this training was determined in the original PBE rule. Many air carriers are now complying with the current PBE training regulations by conducting fire fighting training drills that include putting out an actual fire while wearing PBE. Other air carriers are conducting their training using a split drill, i.e., putting out a real fire with the fire extinguishing equipment and using the PBE with a simulated fire. Although this split drill is not in compliance with the current rule, the benefits of the split drill are comparable to those that would be achieved by compliance with the rule. For the few carriers that are using simulation alone, the full potential benefits could not be achieved due to the current confusion surrounding interpretation of the rule.

Some air carriers that were not conducting an actual fire in the training drill have recently incorporated an actual fire into their training program. The FAA believes that neither the air carriers that are in compliance with the rule nor those few carriers that are using split drills would go to the expense of altering their training programs because of the postponement of the compliance date contained in this amendment. Therefore, delay will not result in a diminution of aviation safety from current levels. Thus, a full regulatory evaluation is unnecessary.

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 postponed compliance date will allow air carriers to remain fully operational so that air carrier service will not be disrupted. Therefore, the FAA has determined that this amendment involves a regulation which is not major under Executive Order 12291 or 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: FLIGHT CREWMEMBERS OTHER THAN PILOTS

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. By revising § 121.417(d) to read as follows:

§ 121.417 Crewmember emergency training.

* * * * *

(d) After July 31, 1992, no crewmember may serve in operations under this part unless that crewmember has performed the firefighting drill prescribed by paragraph (c)(1)(i) of this section.

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Issued in Washington, DC on December 4, 1990.

James B. Busey,
Administrator.

[FR Doc. 90-28872 12-10-90; 8:45 am]

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