McDonnell Douglas: Docket 91-NM-239-AD.

Applicability: Model DC-9-80 series and MD-88 airplanes, equipped with brake part numbers identified in paragraph (a) of this AD, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after the effective date of this Ad, inspect the brake having brakes part numbers specified, below, for wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within this limit.

Series airplane and Douglas brake part No.	Maximum wear limit (inches)
DC-9-81/82/87 and MD-88:	
2608892-1	1.2
5004321-3/-4/-5, all Trapezoid	0.4
5004321-8, Bullnose	0.5
5004321-6, Trapezoid	0.4
5004321-10, Bullnose	0.4
5004321-11, Trapezoid (Standard)	0.5
5004321-11, Trapeziod (Rebalanced)	0.6
5004321-12, Trapeziod	0.4
5007898, Trapeziod	0.6
5007898-1, Trapeziod	0.6
DC-9-83:	
2608892-1,	0.5
5007898, Bullnose	0.4
5007898-1, Trapezoid	0.4

(b) Within 180 days after the effective date of this AD, incorporate the maximum brake wear limits specified in paragraph (a) of this AD, into the FAA-approved maintenance inspection program.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA Transport Airplane Directorate. The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 3, 1991.

Leroy A. Keith, Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-29908 Filed 12-13-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-AWP-17]

Proposed Establishment of Transition Area; Mesquite, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a 700 foot transition area at Mesquite, NV. This transition area would provide controlled airspace for aircraft executing instrument approach procedures to the Mesquite Airport, Mesquite, NV.

DATES: Comments must be received on or before January 17, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP-530, Docket No. 91-AWP-17, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, room 6W14, 15000 Aviation Boulevard, Lawndale, CA.

An informal docket may be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Gene Enstad, Airspace Specialist, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 297-0010.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-AWP-17." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a 700 foot transition area at Mesquite Airport, NV. This transition area will provide controlled airspace for aircraft executing instrument approach procedures to the Mesquite Airport. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

NPRM 91-22

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97449, January 12, 1983); 14 CFR 11.69.

2. § 71.181 is amended as follows:

Mesquite Airport, NV [New]

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Mesquite Airport (lat. 36°50'06"N., long. 114°03'16"W.), and within 1.8 miles either side of the Mormon Mesa VORTAC 246° radial extending from the Mesquite Airport to 10 miles southwest of the Mesquite Airport.

Issued in Los Angeles, California, on December 2, 1991.

Richard R. Lien,

Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 91-29912 Filed 12-13-91; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Part 382

[Docket No. 47649; Notice No. 91-22]

RIN 2105-AB86

Nondiscrimination on the Basis of Handicap in Air Travel

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In response to a petition from the Regional Airline Association, the Department is proposing to amend its rule on aircraft accessibility to require the availability of on-board wheelchairs in only those aircraft that have more than 70 passenger seats—instead of those aircraft that have more than 60 passenger seats as is currently required.

DATES: Comments should be received by January 30, 1992. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Docket No. 47649, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, room 4107. For the convenience of persons who will be reviewing the docket, it is requested that commenters provide duplicate copies of their comments. Comments will be available for inspection at this address Monday through Friday from 9 a.m. through 5:30 p.m. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date-stamp the postcard and mail it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, 202 366-9306 (voice); 202 755-7687 (TDD).

SUPPLEMENTARY INFORMATION:

Background

On March 6, 1990, the Department published in the **Federal Register** a final rule to implement the Air Carrier Access Act of 1986 (55 FR 8008). One part of that rule concerning aircraft accessibility requires, among other things, that new aircraft with more than 60 passenger seats have an accessible lavatory, whether or not required to have such a lavatory, be equipped with an operable on-board wheelchair (§ 382.21(a)(4)(ii)). In addition, the rule requires that new aircraft with more than 60 passenger seats having an inaccessible lavatory have available upon prior request an operable on-board wheelchair for use by a qualified handicapped individual who is able use but is unable to reach the lavatory (§ 382.21(a)(4)(ii)). The rule also requires that air carriers comply with the provisions of paragraph (a)(4) for all aircraft with more than 60 passenger seats within two years of the effective date of the rule (§ 382.21(b)(2)).

On July 19, 1991, the Regional Airline Association (RAA) petitioned the Department to amend its rule on aircraft accessibility to require the availability of on-board wheelchairs in all new aircraft and all existing aircraft as of April 5, 1992, with inaccessible lavatories that have more than 70—instead of the currently required 60—passenger seats. In order to implement the requested change, RAA suggested that the Department revise §§ 382.21(a)(4)(ii) and (b)(2) to apply only to aircraft with more than 70 seats. The Department, in the belief that this petition may have merit, is proposing to make the requested changes. The RAA's petition was published with this notice for the information of commenters.

Petition of the Regional Airline Association

Summary of Petition

Pursuant to the rulemaking procedures of 49 CFR Part 5, the Regional Airline Association, on behalf of its 76 member airlines, hereby petitions for an amendment to 14 CFR Sections 382.21(a)(4)(ii) and 382.21(b)(2). The purpose of this petition is to amend the rules so that the use and carriage of on-board wheelchairs is required only on those passenger aircraft with more than 70 passenger seats. Compliance with the current rule, which would require the carriage and use of on-board wheelchairs on commuter aircraft with more than 60 seats by April 5, 1992, is impractical and unsafe.

The Rule

Section 382.21(b)(2) reads as follows:

Each carrier, within two years of the effective date of this part, shall comply with the provisions of paragraph (a)(4) of this Section with respect to all aircraft with more than 60 passenger seats operated under 14 CFR Part 121.

Section 382.21(a)(4)(ii) reads as follows:

The carrier shall ensure that an operable on-board wheelchair is provided for a flight using an aircraft with more than 60 passenger seats on the request (with the advance notice as provided in § 382.33(b)(8) of a qualified handicapped individual who represents to the carrier that he or she is able to use an inaccessible lavatory but is unable to reach the lavatory from a seat without the use of an on-board wheelchair.

The combination of the two sections referenced above creates a requirement that on-board wheelchairs be available for use on all passenger aircraft with more than 60 seats by April 5, 1992.

The Use of On-Board Wheelchairs is Not Practical or Safe on Aircraft With Fewer Than 70 Seats.

In its original comments to the Notice of Proposed Rulemaking on part 382, RAA expressed its concern about the safety and practicality of using on-board wheelchairs on small aircraft. To a large extent, DOT recognized those concerns when it limited the requirement for the use of on-board chairs to those aircraft with more than 60 seats.

Although the 60-seat cut-off eliminates the overwhelming number of commuter aircraft from this requirement, it fails to recognize a small number of aircraft in the commuter fleet which are slightly larger than 60 seats, yet the nearly identical to models currently operated by the same carriers in the same markets. Since two types of regional airline aircraft are now flying with more than 60 seats, but with the same interior physical limitations as aircraft with 60 or fewer seats, RAA requests that § 382.21 be amended to increase the cutoff for wheelchair usage from 60 to 70 seats or, in the alternative, to grant an exemption from this requirement for the two aircraft identified below. This rule change or exemption would allow a small number of aircraft to be excluded from the requirement of § 382.21.

The preamble to the DOT Final Rule stated that "RAA's concerns about the use of on-board chairs in small aircraft are moot, since the rule will require on-board chairs only in aircraft with accessible lavatories, which small commuter aircraft typically do not have." (55 FR 8034; March 6, 1990). The preamble goes on to state, "In the multiple aisle environment of widebody aircraft in which accessible lavatories, and hence on-board chairs, are required, flight attendant crews are larger than in other aircraft and conflicts with other flight attendant functions (e.g., meal and beverage service) are less likely to occur." Clearly, DOT did not envision that the narrow aisle, short haul commuter type aircraft would be subject to the on-board chair requirement, yet the Final Rule requires that chairs would be provided on two aircraft used by commuter operators. In addition to the meal and beverage service mentioned by DOT, RAA believes that the primary responsibilities of the flight attendants, passenger assistance in emergencies and firefighting, could be impeded by allowing on-board wheelchairs on commuter size aircraft.

The specific regional airline aircraft impacted by the rule are the Aerospatiale/Aeritalia ATR–72 and the British Aerospace Advanced Turboprop (ATP). The ATR–72 is currently in service with AMR Eagle in San Juan, Chicago and Nashville and with Trans States Airlines (Trans World Express) in St. Louis. As can be seen from the attached graphic, the ATR–72 has the same fuselage cross section as the 50-seat ATR–42.[1] Problems associated with use of wheelchairs on the ATR–72 are identical to those involved in using wheelchairs on the ATR–42. Thus, the same practical difficulties with the use of an on-board wheelchair are evident in the ATR–72 as in the ATR–42. The 64-seat British Aerospace ATP is currently in service with Air Wisconsin, operating as United Express, based in Appleton, Wisconsin. Attached is a graphic showing the cabin layout on the BAe ATP, demonstrating the same type of physical limitations to wheelchair use as on the ATR–72.[2]

The ATR–72 and the BAe–ATP are designed for and flown in the traditional commuter airline mode, *i.e.*, short haul trips connecting a hub airport to small and medium-sized communities. Although they are larger than other commuter aircraft, they are identical to those smaller aircraft in other respects. They have the same turboprop engines which permit the economical short-haul operations. Flights in these aircraft will rarely exceed two hours, thereby mitigating the need for an on-board wheelchair, and making their use less practical for an already very busy cabin crew.

In the AMR Eagle system, the ATR–72 and the ATR–42 will be used interchangeably. They are designed to be used by the same crews and in the same commuter markets. They will be used to supplement existing service to handle peak hour and seasonal demand, and will routinely be used in alternating service patterns. Therefore, a passenger flying between two cities might go on an ATR–72 in one direction and an ATR–42 in the other, depending on the time of the flight. In the case of American Eagle, the ATR–72 aircraft will only amount to a small percentage of the carrier's fleet. It would be costly and unrealistic for these carriers to be required to use on-board wheelchairs on these aircraft when that same requirement would not apply to the majority of aircraft operated by these carriers. It would also be confusing for passengers and crews. It is not possible to carry on-board wheelchairs on the ATR–42 without significantly modifying the aircraft interiors, even if the carrier elected to do so.

Using current projections, there will be a total of 9 ATR–72s and 10 ATPs in service by the end of 1991. If these requirements were applied to the ATR–72 and ATP, all cabin crewmembers would have to be trained to operate the wheelchairs since those crewmembers could routinely be assigned to those aircraft. Since these flights would only represent a small percentage of the overall operations of the affected carriers, it would result in a significant cost for the carriers, without commensurate benefit to the traveling public. Each carrier would have to develop reservations, notification, training, and maintenance requirements for only a handful of aircraft. The number of passengers that could take advantage of the wheelchair service would likewise be small. Considering the acknowledged difficulty in the use of on-board wheelchairs on aircraft of this size, it would be in the public interest to exclude these aircraft from the on-board wheelchair requirement.

Conclusion

Accordingly, the Regional Airline Association requests that 14 CFR 382.21 be amended to require the carriage and use of on-board wheelchairs only on aircraft with more than 70 passenger seats. In the alternative, RAA requests that the ATR–72 aircraft and the BAe–ATP aircraft be exempted from the requirements of § 382.21 to carry on-board wheelchairs.

Date: July 18, 1991.

Respectfully submitted,

John S. Fredericksen,

President; Regional Airline Association.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

This proposed action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It would not result in an annual effect on the economy of $100 million or more. This regulation is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979. A full regulatory evaluation is not required because the overall economic impact of the proposal would be minimal. There would be little, if any, increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore this proposed rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

I certify that this proposal would not have a significant economic impact on a substantial number of small entities. As stated above, this proposed rule would have minimal economic impact.

Executive Order 12612 (Federalism)

In accordance with Executive Order 12612, I have determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 382

Aviation, Handicapped.

Issued this 5th day of December, 1991, at Washington, DC.

Samuel K. Skinner,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation proposes to amend title 49 of the Code of Federal Regulations, part 382:

PART 382—[AMENDED]

1. The authority citation for Part 382 would continue to read as follows:

Authority: Sections 404(a), 404(c), and 411 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1374(a), 1374(c), and 1381).

2. Section 382.21 would be amended by revising paragraphs (a)(4)(ii) and (b)(2) to read as follows:

§ 382.21 Aircraft accessibility.

(a) * * *

* * * * *

(4)(i) * * *

(ii) The carrier shall ensure that an operable on-board wheelchair is provided for a flight using an aircraft with more than 70 passenger seats on the request (with advance notice as provided in § 382.33(b)(8)) of a qualified handicapped individual who represents to the carrier that he or she is able to use an inaccessible lavatory but is unable to reach the lavatory from a seat

[1] Cabin Layout Diagrams and Measurement Information are available for inspection at the Department of Transportation, Office of the General Counsel, 400 7th St. SW., Room 10424, Washington, DC 20590.

[2] See footnote 1.

without the use of an on-board wheelchair.

* * * * *

(b)(1) * * *

(2) Each carrier, within two years of the effective date of this part, shall comply with the provisions of paragraph (a)(4) of this section with respect to all aircraft with more than 70 passenger seats operated under 14 CFR part 121.

* * * * *

[FR Doc. 91-29788 Filed 12-13-91; 8:45 am]
BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Ch. VII

[Docket No. 911299-1299]

Request for Comments on Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Export Administration (BXA) is reviewing the foreign policy-based export controls in the Export Administration Regulations (15 CFR parts 730 through 799) to determine whether they should be modified, rescinded or extended. To help BXA make this determination, BXA is seeking comments on how existing foreign policy-based export controls maintained under the Export Administration Regulations, have affected exporters and the general public.

Although the EAA expired on September 30, 1990, the President, invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the Export Administration Regulations (EAR) in Executive Order 12730 of September 30, 1990.

DATES: Comments must be received by December 30, 1991 to assure full consideration in the formulation of export control policies.

ADDRESSES: Written comments (six copies) should be sent to Patricia Muldonian, Regulations Branch (Room 1622), Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: John Bolsteins, Country Policy Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4830.

SUPPLEMENTARY INFORMATION: The current foreign policy control maintained by the BXA are set forth in the Export Administration Regulations (EAR), parts 776, 778, and 785. These controls apply to: Crime control and detection commodities (§ 776.14); regional stability commodities and equipment (§ 776.16); equipment and related technical data used in the design, development, production, or use of missiles capable of delivering nuclear weapons (§ 778.7); chemical precursors and biological agents and associated equipment and technical data related to the production of chemical and biological agents (§ 778.8); embargoed countries (§ 785.1); South Africa (§ 785.4(a)); countries designated as supporters of acts of international terrorism (§ 785.4(d)); and, Libya (§ 785.7).

On January 18, 1991, the Secretary of Commerce extended for one year all foreign policy controls then in effect. Since the date of that report certain foreign policy controls on South Africa have been terminated. Also, because of the Secretary of State did not include the new Republic of Yemen on the list of countries designated as supporters of international terrorism (55 FR 37793, September 13, 1990), certain foreign policy controls on the southern region of Yemen, formerly known as the People's Republic of Yemen, have expired. On March 13, 1991, two elements of the President's Enhanced Proliferation Control Initiative (EPCI) were made effective, one expanding controls on chemical weapon precursors (56 FR 10756) and the other imposing controls on equipment and technical data related to the production of chemical and biological weapons (56 FR 10760). The third element followed on August 15, 1991 (56 FR 40494), imposing various controls on certain exports that could be destined for missile or chemical or biological weapons-related use. On August 29, 1991 (56 FR 42824), in conjunction with publication of the new Commerce Control List, foreign policy controls were adjusted and, in limited cases, expanded on Iran and Syria, as well as on equipment and technology controlled for missile technology purposes.

To assure maximum public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy controls for another year. Among the criteria which the Departments of Commerce and State consider in determining whether to continue to revise U.S. foreign policy controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;

2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;

3. The compatibility of the proposed controls with the foreign policy objectives of the United States and with overall United States policy toward the country to which exports are to be subject to the controls;

4. The reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

5. The effect of the proposed controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology, or the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives; and

6. The ability of the United States to enforce the proposed controls effectively.

BXA is particularly interested in the experience of individual exporters in complying with these controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BXA is also interested in comments relating to the effects of foreign policy controls on exports of replacement and other parts.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BXA in reviewing the controls and developing the report to Congress.

BXA will consider requests for confidential treatment. The information for which confidential treatment is requested should be submitted to BXA separate from any non-confidential

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 24792; Amendment No. 121-212]

Protective Breathing Equipment

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Disposition of comments.

SUMMARY: This document summarizes and responds to comments received by the FAA concerning the Protective Breathing Equipment (PBE) final rule published February 15, 1990 (55 FR 5548). That rule amended the PBE equipment regulations by making the following three changes: (1) It extended the compliance date for installing PBE for the use of flight crewmembers while on flight deck duty; (2) it codified a finding by the Administrator that nonpressurized airplanes must be equipped with PBE when operated in air carrier service; and (3) it postponed the date by which operators of all-cargo airplanes would have to install portable PBE for combating in-flight fires.

ADDRESSES: The protective breathing equipment final rule, amendment, and all comments may be examined in Docket No. 24792 at the Federal Aviation Administration, Office of the Chief Counsel, Rules Docket, room 915-G, 800 Independence Avenue, SW., Washington, DC 20591. The Rules Docket is open weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Gary Davis, Flight Standards Service, AFS-240, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3410.

SUPPLEMENTARY INFORMATION:

The Amendment

On February 15, 1990, the FAA amended § 121.337 of the Federal Aviation Regulations. The amendment was effective upon publication, and included a comment period that closed April 16, 1990.

Amendment No. 121-212 amended the regulations applicable to protective breathing equipment by making the following three changes: (1) It extended the compliance date for the installation of PBE units for the use of flight crewmembers while on flight deck duty to July 31, 1990; (2) it codified a finding of the Administrator that operators of nonpressurized airplanes must install PBE units for both fighting in-flight fires and for the use of flight crewmembers while on flight deck duty and established February 18, 1992, as the compliance date for the installation of approved PBE on the flight deck for nonpressurized airplanes; and (3) it postponed until February 18, 1992, the date by which all-cargo operators would be required to install multiple units of PBE on the flight deck for use in Class E cargo compartments.

Discussion of the Comments

The FAA reviewed all comments submitted to the docket that addressed the final rule amendment. Those five comments and the FAA's responses follow.

Compliance Date for PBE for Use on the Flight Deck

Air Transport Association states that the extension of the compliance date to July 30, 1990, satisfies their July 27, 1989, petition and requests that the FAA terminate action on the petition.

In its comments ATA also advises the FAA that the July 31, 1990, compliance date may be a problem for some Part 121 operators and that five ATA members probably cannot meet that date.

The FAA's Response

Following the above comment, by letter dated June 6, 1990, ATA petitioned the FAA to further extend the PBE compliance date for the installation of PBE units for the flight deck until January 31, 1991. By the end of June 1990, the FAA had received eight additional petitions to extend the compliance date. Like ATA, these operators cited supply problems with vendors. Because the FAA determined that this problem was an industry-wide supply problem and that operators had made a good faith effort to comply, the FAA determined that an extension of the compliance date was justified. Therefore, Amendment No. 121-218, was issued July 30, 1990, further extending the compliance date for the installation of PBE units on the flight deck for use by the flight crew until January 31, 1991.

PBE Units for Airplanes With Nonpressurized Cabins

ALPA states in its comments that it concurs that the PBE requirement should be for all air carrier aircraft. It further states that the compliance date should be extended to provide sufficient time for acquisition of appropriate equipment.

The Regional Airline Association (RAA) states that it had previously requested reconsideration of the requirement for PBE equipment for the flight deck of the Shorts SD3-60 aircraft. RAA restates what it believes to be the basis for reconsideration: that the aircraft is unpressurized; that the aircraft was type-certificated without a fixed source of breathing gas for flight crewmembers; that smoke and toxic gas can be evacuated from the cockpit using procedures in the Flight Manual; and that the SD3-60 operated under Part 121 has the same cockpit layout and systems that the SD3-60 has that is operated under Part 135 without PBE. RAA comments that it was disappointed to learn that FAA had decided not to accept RAA's offer to conduct a flight test in the SD3-60 aircraft and that the FAA had determined that PBE will be required to be installed on the flight deck of all U.S.-registered SD3-60 aircraft. RAA requests that it be allowed until May 31, 1990, to submit additional comments to show that the existing smoke evacuation and ventilation system is effective in removing gas and smoke from the cockpit. RAA states that it also intends to show that the added weight, down time, and resources required to install a fixed oxygen system would not significantly increase safety and would therefore not be in the public interest.

The FAA Response

The FAA has granted RAA additional time to submit its comments and has not received this information.

The FAA has determined, for the reasons stated in the finding, and restated in the preamble to Amendment No. 121-212, that both categories of PBE must be installed in the SD3-60. The established compliance date of February 18, 1992, is designed to give certificate holders operating the SD3-60 and other aircraft ample time for retrofit of the oxygen system.

PBE for Use in All-Cargo Aircraft

ATA states that Amendment No. 121-212 did not include discussion of its August 14, 1989, petition referencing all-cargo aircraft. This petition asks that the FAA delete requirements to install PBE within the Class E cargo compartment or to require redundant PBE to be installed in the cockpit for use in the Class E compartments. ATA restates the position of the all-cargo operators that Class E compartments are generally not accessible. The association believes that it is more desirable to locate units outside accessible compartments. ATA then compares the PBE requirement for all-cargo airplanes with Exemption No. 5002. In that grant of exemption the FAA agreed that it was prudent to install fire extinguishers outside certain galleys for

use in those galleys. ATA also notes that in that grant the FAA did not require redundant fire extinguishers and that this precedent was discussed in its petition. ATA agrees with the FAA's statement that "The FAA may determine that the requirement for multiple PBE units on-board all-cargo airplanes is unnecessary," but also states that it would have preferred a decision that would have granted its petition. ATA requests that the FAA take action on its petition for exemption and not go forward with any rulemaking action.

The FAA Response

ATA correctly states that in Amendment No. 121–212 the FAA did not refer to the August 14, 1989, petition submitted by ATA to delete the requirement for multiple portable PBE units for use in all-cargo aircraft. The FAA did, however, include in that amendment a lengthy discussion of the arguments presented by five all-cargo operators which were the essence of the ATA petition.

In Amendment No. 121–193 [June 3, 1987; 52 FR 20954], the FAA stated that the portable PBE unit may be located outside of the Class E cargo compartments rather than within the cargo compartment as long as it is "easily assessible for use in these areas." However, the FAA also determined that the language of the current rule "one for use in each A, B, and E cargo compartment . . ." would in some cases require multiple units. It is precisely because the FAA believes that this issue deserves further reconsideration that the requirement was postponed for 2 years. As all-cargo operators constitute a general class of operator, the exemption that ATA requests is inappropriate. Rather, in order to change the requirement, the FAA must propose an alternative requirement through the rulemaking process. In order to allow sufficient time to research the all-cargo situation, allow time for comment on a proposal, and then issue a final rule, the FAA determined that a 2-year extension is appropriate.

General Comments Concerning All-Cargo Aircraft

Mid-Pacific Air Corporation (Mid-Pacific) states that it operates the Nihon YS–11A aircraft with a crew of two and that its crews are trained not to leave the cockpit during flight. Mid-Pacific states that it has one portable PBE unit in the cockpit for a crewmember to use in case of fire since at no time would more than one crewmember be fighting a fire. Mid-Pacific believes that the number of PBE units required to be on an aircraft may depend on how many crewmembers can leave the cockpit in case of a fire in the cargo area.

Airborne Express (Airborne) comments that Class E compartments usually have limited access, and that even though a person can enter a Class E compartment, it may be impossible to gain access to the container in which the fire is located. Airborne also states that crewmembers on aircraft with only two required crewmembers would not be able to combat an in-flight fire without endangering the operation of the aircraft. Airborne believes that if a crewmember needs to investigate an on-board fire, the one portable PBE unit required for the flight deck would be sufficient. Therefore, another portable PBE unit would be redundant.

The Airline Pilots Association (ALPA) states that for all-cargo aircraft, the PBE units should be portable so that the crew is not limited in its options in coping with a fire. ALPA's reasoning is that while the crew normally would remain in their seats, there may be situations where one of them should exit the flight deck to examine a fire. ALPA also states that PBE for all-cargo airplanes should be in place by January 1, 1991, because purchase and installation of equipment for cargo compartments should not be more difficult than complying with the PBE requirement for the cabin. ALPA requests that the FAA decrease the 2-year compliance period.

The FAA's Response

The FAA appreciates the comments of Mid-Pacific, Airborne Express, and ALPA. These comments will be given further consideration in future rulemaking efforts. However, to give the FAA sufficient time to review the PBE requirements for all-cargo airplanes and to issue an NPRM if it is determined that the rule must be amended, the FAA declines to adopt ALPA's suggestion to decrease the 2-year compliance period.

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William J. White,

Acting Director, Flight Standards Service.

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