

**Monday
May 22, 1989**

Final Rule

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

**Protective Breathing Equipment; Final
Rule; Amendment of Compliance Dates**

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 121****[Docket No. 24792; Amdt. 121-204]****Protective Breathing Equipment****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule; amendment of compliance dates.

SUMMARY: This amendment revises §§ 121.337(f) and 121.417(d) by changing the compliance date for installing protective breathing equipment (PBE) and for training air carrier crewmembers in the use of PBE. The compliance date is extended from July 6, 1989, to January 31, 1990. This amendment is necessary due to technical problems and delays in the certification of PBE and production problems experienced by several manufacturers of PBE. By extending the compliance date, air carriers will not be penalized for the supply problems caused by the delayed certification and production of PBE units.

DATES: Effective May 22, 1989. Comments must be received by July 21, 1989.

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. 25909, 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 FAA states in the preamble to Amendment No. 121-193, dated June 3, 1987, that tests show there is at least one currently available portable smoke hood device that would essentially provide the required levels of protection for crewmembers combating fires. Further, the amendment states that the 2-year compliance period for PBE should allow ample time for development, manufacture, and distribution of adequate numbers of new equipment and time for required training.

The statement concerning the 2-year compliance period being ample later proved to be in error. Although the FAA issued certification standards on April

21, 1987, manufacturers encountered difficulties designing a PBE unit that met those standards. On May 24, 1988, an FAA memorandum was sent to field offices providing guidance and clarification on these problems. In October 1988, after a major product redesign, one vendor's PBE unit design was approved. Manufacturing approval for this unit was obtained in November 1988.

Since November 1988, one PBE vendor had discontinued manufacturing the units due to production problems. Production was resumed in April 1989, with deliveries completed in September 1989. Other PBE vendors are also experiencing production difficulties. In addition, air carriers cannot train crewmembers without PBE units; therefore, the production delays cause the concurrent problem of air carriers not meeting the compliance date for crewmember training.

If the compliance date is not changed, several air carriers will have to conduct special out-of-cycle installation and training programs. Such programs will require air carriers to remove a large number of aircraft from public service. Other air carriers will not achieve compliance under any circumstances.

The FAA has determined that the original 2-year compliance period does not provide enough time for development, manufacture, and distribution of adequate numbers of PBE units. Although the air carriers have made a good faith effort to comply with the rule, compliance by July 6, 1989, is impracticable. In this case, extension of the compliance date is justified and in the public interest. Therefore, the FAA is amending §§ 121.337(f) and 121.417(d) to change the compliance date in the regulations from July 6, 1989, to January 31, 1990.

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 service without increasing the level of safety. In this case, the compliance problem is a result of certification and production delays forcing manufacturers of PBE units to delay production and delivery schedules. Thus, air carrier 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 final rule beyond the current compliance date of July 6, 1989, forcing many air carriers into noncompliance. Noncompliance, even for a short period of time, would

require air carriers to remove all noncomplying aircraft from service until the final rule could be issued. To avoid widespread disruption of passenger service, the FAA finds that the compliance date should be extended until January 31, 1990. 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.

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**Final Rule**

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 delayed compliance date will allow air carriers to keep non-complying airplanes operating so that passenger service will not be disrupted. Because the delay in installing PBE units is so short, the effect on passenger safety is diminutive. 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 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 § 121.337(f) to read as follows:

§ 121.337 Protective breathing equipment.

(f) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the final compliance date for furnishing

portable PBE for use on combatting in-flight fires aboard airplanes shall be January 31, 1990.

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

§ 121.417(d) Crewmember emergency training.

(d) After January 31, 1990, 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.

Issued in Washington, DC, on May 17, 1989.

Robert E. Whittington,

Acting Administrator.

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