
Monday
December 16, 1991

Part V

**Department of
Transportation**

Federal Aviation Administration

14 CFR Part 121

**Protective Breathing Equipment; Final
Rule**

Federal Register

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 assessable 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.

Issued in Washington, DC on December 9, 1991.

William J. White,
Acting Director, Flight Standards Service.
[FR Doc. 91-29913 Filed 12-13-91; 8:45 am]

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Thursday,
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Federal Register

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Protective Breathing Equipment; Final
Rule and Request for Comments

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

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

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

SUMMARY: This amendment revises the regulations applicable to protective breathing equipment (PBE) with three changes. (1) It extends the compliance date for installing PBE for the use of flight crewmembers while on flight deck duty. This amendment is necessary because of a misunderstanding of the final rule due to a lack of FAA guidance material. By establishing this compliance date, certificate holders will not be penalized for this misunderstanding and for the current unavailability of sufficient numbers of PBE units and components.

(2) The FAA also amends the PBE regulations to codify, for convenient public reference, a finding by the Administrator that nonpressurized airplanes must be equipped with PBE when operated in air carrier service and to establish dates by which certificate holders who operate nonpressurized airplanes must comply with the PBE requirements. Operators of nonpressurized airplanes that must be retrofitted with a PBE fixed breathing gas supply for flight crewmembers on flight deck duty are being allowed an extended compliance period.

(3) Finally, this amendment postpones the date by which certificate holders who operate all-cargo airplanes would have to install portable PBE units for use in combatting in-flight fires in Class A, B, or E cargo compartments. Certificate holders who operate all-cargo airplanes have raised questions concerning the requirement. To allow time for the FAA to reconsider and clarify the requirements for this group of operators, the effective date for installation of PBE units for use in these cargo compartments is being postponed.

EFFECTIVE DATE: February 15, 1990.

Comments must be received by April 16, 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-204), 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: 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 is equipment for use by flight crewmembers in the cockpit. 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 in-flight 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; portable PBE units for use by crewmembers in combatting a fire must meet the standards of TSO C116 or equivalent standards.

PBE Units for Use by Flight Crewmembers on Flight Deck Duty

The FAA states 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 approval of PBE beyond those contained in the operation and certification rules. After issuing TSO-C99, the FAA tested a number of oxygen mask-smoke goggle combinations currently in use in airplanes required to be equipped in accordance with § 121.337 of the FAR. These tests showed that many of these PBE units permitted contaminant concentration levels that exceeded the performance levels prescribed in TSO-C99. The FAA determined that certificate holders using these units were required to replace those units with acceptable equipment that met TSO-C99 approval guidelines.

The FAA 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 misleading in that it suggested to some that only newly-installed equipment must be approved. However, it was intended to mean that

all PBE units, including those units already in use, that did not meet the approval guidelines of TSO-C99 were not "approved", and 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. Although the amendment modified the standards for "approved" PBE units, the FAA did not provide guidance or notification to certificate holders that PBE units for use by flight crewmembers while on flight deck duty must be modified or updated by the effective date of Amendment No. 121-193. Therefore, many certificate holders have not installed acceptable PBE units for the use of flight crews on flight deck duty.

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. Recently, however, the FAA was advised that many certificate holders have not installed acceptable PBE units for the use of flight crewmembers on flight deck duty. By letter of July 27, 1989, the Air Transport Association petitioned the FAA on behalf of the air carriers operating under part 121 of the FAR for an exemption from what those carriers state they now recognize as a requirement for upgrading PBE units currently installed on the flight deck of their airplanes for use by flight crewmembers at their assigned stations. The justification provided by the petitioner regarding the need for the exemption was based on the unavailability of parts and components needed to upgrade the PBE units in question to meet the TSO-C99 approval requirements.

The ATA recognizes that the original compliance date is past, but states that, unless a new compliance date is established, several air carriers will have to conduct special out-of-cycle installation of PBE. Such programs would require air carriers to remove a large number of aircraft from public service. The ATA also posits that other air carriers will not achieve immediate compliance under any circumstances, since existing equipment must be replaced or modified, and manufacturers cannot supply such large numbers of replacement parts and equipment on such short notice. In order to provide enough time for the manufacture and distribution of adequate numbers of replacement parts and modified PBE units for flight crewmembers on flight deck duty, the ATA has requested that

the FAA establish a final compliance date of July 31, 1990 for the upgrade or retrofit of such PBE units.

The FAA finds that, due to a misunderstanding of the rule and the lack of available PBE units and replacement parts, the compliance period requested by ATA is justified and in the public interest. Therefore, the FAA is amending § 121.337(f), redesignated as § 121.337(d), to provide a compliance date of July 31, 1990, for the installation of PBE for the use of flight crewmembers at their assigned duty stations.

The compliance date for portable PBE units for combatting inflight fires in passenger compartments as established by Amendment No. 121-204, issued May 17, 1989, is not changed. That compliance date is January 31, 1990.

PBE Units for Nonpressurized Cabin Airplanes

Amendment No. 121-193, effective July 6, 1987, provided that the PBE requirements for pressurized cabin airplanes would also apply to certificate holders operating nonpressurized cabin airplanes subject to the provisions of § 121.337(c) if "the Administrator finds that it is possible to obtain a dangerous concentration of smoke or carbon dioxide or other harmful gases in the flight deck area." On February 6, 1989, the Administrator made that finding. This decision is contained in a February 6, 1989, memorandum from the Manager, Air Transportation Division to all FAA Regional Flight Standards Division Managers, the subject of which is "Protective Breathing Equipment Requirements for Unpressurized part 121 Aircraft". The contents of the memorandum are as follows:

This memorandum provides the agency's position regarding the requirement for Protective Breathing Equipment (PBE) on unpressurized part 121 aircraft.

Recent inquiries have requested information on whether the Shorts SD3-60, a nonpressurized part 25 aircraft operated under part 121, must meet the PBE requirements specified in FAR 121.377 (a) and (b).

Whether an aircraft is pressurized or not, it is possible to experience fire, smoke, or other harmful gases in the aircraft. There have been numerous service difficulty reports concerning smoke on the flight deck for a variety of aircraft and a variety of reasons. It would be superfluous to elaborate on the myriad possibilities that could produce fire, smoke or gases in an aircraft.

The materials used for construction of the Shorts SD3-60 flight deck and passenger cabin interiors are not unlike materials used by other part 121 aircraft. This similar material can produce heavy smoke and toxic gases in the event of a fire. The possibility of a fire, therefore, presents a vulnerability to

toxic fumes which could incapacitate a flight crew member.

The Shorts aircraft pose another condition in that all the fuel tanks are located in the ceiling of the fuselage above the passenger compartment. There have been past instances when fuel has seeped into the overhead bins causing toxic gases in the passenger compartment. Although an Airworthiness Directive was issued addressing the problem, it does not preclude the possibility that other fuel leaks could occur.

The analysis of the hazard by the Long Beach Aircraft Evaluation Group has, therefore, prompted a decision to require the Shorts SD3-60 to comply with the PBE rule.

In addition, after a careful evaluation of past experience it has been concluded that the lives that may be saved justify the installation of Protective Breathing Equipment on all unpressurized aircraft operated under part 121.

As a result of a survey, the FAA has determined that all nonpressurized airplanes except the SD3-60 have a built-in source of oxygen that allows the installation of PBE equipment for flight crewmembers on flight deck duty. The SD3-60 was type certified through a bilateral agreement with the United Kingdom without a source of oxygen for use by the flight crew. After the determination by the Administrator that PBE units must be installed on all nonpressurized airplanes to be operated under part 121 of the FAR, the Regional Aircraft Association met with FAR officials and requested reconsideration of the Administrator's finding that PBE units be installed in the cockpit for flight crewmembers in the SD3-60 airplane. RAA notes that the SD3-60 airplane was type-certificated without built-in oxygen equipment and has been operated in the United States during the past 8 years without encountering any known problems with toxic gas concentrations in the cockpit. Installing PBE for use by the flight crew would require operators of the SD3-60 to retrofit these airplanes with oxygen systems.

The FAA has reconsidered its position and has determined that both categories of PBE units must be installed in the SD3-60 airplane. However, in order to give certificate holders operating the SD3-60 airplane ample time for the extensive oxygen system retrofit that appears to be needed and to obtain and install PBE units, the FAA here establishes a final compliance date of February 18, 1992 for the installation of PBE for use by the flight crew while on flight deck duty. As stated earlier, the compliance date for installation of portable PBE for combatting in-flight fires remains January 31, 1990.

To codify the Administrator's finding, and thereby provide a convenient source of reference for it, current

§ 121.337 (c) and (d) are removed and paragraph (b) is revised to specify that the equipment, breathing gas, and communications requirements of this paragraph apply to nonpressurized airplanes as well. However, in order to give certificate holders who operate the Shorts SD3-60 airplane time to install a breathing gas system in the airplane, paragraph (f) is changed to permit a delayed compliance date for PBE units for the use of the flight crew while on flight deck duty. The revision will appear as new paragraph (d).

Current paragraph (d) requires that all operators of nonpressurized airplanes that have a built-in carbon dioxide fire extinguisher system in a fuselage compartment shall provide PBE for the flight crew except where (1) not more than 5 pounds of carbon dioxide would be discharged into any compartment in accordance with established fire control procedures, or (2) the carbon dioxide concentration at each flight crewmember station is found to be less than 3 percent by volume. Thus, there always has been a category of nonpressurized airplanes required to have PBE installed, notwithstanding the exemption of nonpressurized airplanes in paragraph (c). Although current paragraph (d) excludes some nonpressurized airplanes with carbon dioxide fire extinguisher systems from the PBE requirements; i.e., (1) and (2) listed above, the FAA believes that no such fire extinguisher systems are in use today on board airplanes that operate under part 121. However, since the Administrator extended the finding that PBE is required in all nonpressurized airplanes, even if such an airplane is in use it is required to have PBE units. Therefore, due to the obsolescence of the above two exceptions to current paragraph (d) and the Administrator's finding that requires all operators of nonpressurized airplanes to install PBE, current paragraph (d) is removed from this section as a conforming change.

PBE Units for Combatting In-flight Fires: All-Cargo Airplanes

Section 121.337(b) provides, in pertinent part, that one PBE unit with a portable breathing gas supply meeting the requirements of this section must be easily accessible and conveniently located for immediate use by crewmembers in combatting fires in each Class A, B, and E cargo compartment (as defined in § 25.857) that is accessible to crewmembers during flight. Representatives of several of the all-cargo air carriers have pointed out to the FAA that it is impracticable to locate a PBE unit in a Class E cargo

compartment when the flight crewmembers of these carriers are either specifically trained not to enter the cargo compartment in a fire or access is practically impossible. These carriers also point out that in the extremely rare situation when a crewmember would have to enter a burning cargo area, the crewmember, for reasons of safety, should don the PBE equipment before, rather than after, entering the cargo compartment. Thus, to have the PBE unit closed in the Class E cargo compartment of an all-cargo airplane rather than available to a crewmember before that crewmember enters the cargo compartment could pose a safety hazard.

As an alternative to the current requirements of the rule, these air carriers propose to have PBE units that meet the approval standards of TSO-C99, or equivalent standards, installed for each flight crewmember and additional seat in the flight deck area, and to also install one portable PBE unit that meets the approval standards of TSO-C116, or their equivalent, available in the cockpit for the unlikely situation in which a crewmember might have to combat an in-flight fire. This would differ from the requirements of § 121.337(b)(9)(i) in that additional PBE units, i.e., one for use in each cargo compartment, would not be installed.

The FAA believes that there is no safety hazard presented by the current PBE requirements for all-cargo airplanes. Section 121.337(b)(9) requires that PBE units be easily accessible and conveniently located "for use in" each cargo compartment; this does not limit the location of each PBE unit to only the area of the compartment. However, the FAA also finds that the arguments presented by these carriers may have merit in terms of the redundancy of having multiple portable PBE units available. The FAA believes that the particular situation of the all-cargo certificate holders deserves further consideration through the rulemaking process, i.e., by notice and public procedure, to determine appropriate PBE requirements for all-cargo airplanes. Because the final compliance date for furnishing these portable PBE units was revised in Amendment 121-204 to January 31, 1990, compliance with those PBE requirements by that date would mean that these all-cargo certificate holders would have to purchase and install PBE units which the FAA may later determine are not needed. Therefore, the FAA finds that it is in the public interest to postpone the compliance date for these certificate holders for 2 years. Thus, the

compliance date for those certificate holders who operate all-cargo airplanes that are subject to the portable PBE requirements of § 121.337(b)(9)(i) is postponed until February 18, 1992. The FAA has determined that postponing the compliance date for this group of operators will not have a detrimental effect on safety because, in accordance with § 121.337(b)(8) and (b)(9)(iii), each flight crewmember on flight deck duty must have a PBE unit and one portable PBE unit must be located on the flight deck for use by flight crewmembers for combatting an in-flight fire.

Interested persons are invited to submit such comments as they may desire regarding this amendment and PBE units for cargo compartments. 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.

Based on the previous discussion, the FAA finds that a compliance date for the installation of PBE units in pressurized and nonpressurized cabin airplanes for flight crewmembers while on flight deck duty should be established as July 31, 1990. However, operators of nonpressurized airplanes that must be retrofitted to provide a PBE breathing gas supply for flight crewmembers on flight deck duty will have an extended compliance date of February 18, 1992. In addition, the final compliance period for installing portable PBE as required by § 121.337(b)(9)(i) for use in combatting inflight fires for certificate holders operating all-cargo airplanes is extended until February 18, 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 passenger and cargo service. In the first case, the compliance problem is a result of a misunderstanding of the rule due to a lack of FAA guidance to the industry and the omission of an explicit compliance date for installing and upgrading PBE units for flight crewmembers on flight deck duty. Even though the PBE requirements are now understood, sufficient time is not available to manufacture the quantity of PBE units needed by certificate holders

to correct industry-wide noncompliance. 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 services, the FAA finds that notice and public comment under these circumstances are impracticable.

In the second case, codification of the Administrator's finding requires an amendment that will delete obsolete references to nonpressurized airplanes in the rule. Therefore, this is a clarifying amendment and notice and public comment are unnecessary.

In the last case, Part 121 all-cargo operators have raised questions concerning the requirement for airplanes used in all-cargo operations to have multiple portable PBE units on board. The FAA may determine that the requirement for multiple portable PBE units on-board all-cargo airplanes is unnecessary. Therefore, the amendment will temporarily relieve these operators from purchasing and installing multiple PBE units until the FAA determines whether to delete the requirement; thus, notice and public comment are unnecessary and contrary to the public interest.

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 delayed and newly established compliance dates will allow air carriers to keep non-complying 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 28, 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 the heading of paragraph (b); by removing paragraphs (c) and (d); by redesignating paragraphs (e) and (f) as paragraphs (c) and (d); and by revising newly redesignated paragraph (d) to read as follows:

§ 121.337 Protective breathing equipment.

* * * * *

(b) *Pressurized and nonpressurized cabin airplanes.*

* * * * *

(d) *Compliance dates.* (1) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the final compliance date for furnishing PBE for use in combatting in-flight fires aboard pressurized and nonpressurized airplanes is January 31, 1990, except that for all-cargo airplanes subject to the requirements of paragraph (b)(9)(i) of this section the compliance date is February 18, 1992.

(2) Notwithstanding the provisions of paragraphs (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 July 31, 1990, 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 February 9, 1990.

James B. Busey,
Administrator.

[FR Doc. 90-3520 Filed 2-9-90; 4:12 pm]

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DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 121****[Docket No. 24792; Amdt. 121-212]****Protective Breathing Equipment***Correction*

In rule document 90-3520 beginning on page 5548 in the issue of Thursday, February 15, 1990, make the following corrections:

1. On page 5549, in the second column, in the fourth paragraph, in the seventh line, "certified" should read "certificated".
2. On the same page, in the same column, in the same paragraph, in the 15th line, "FAR" should read "FAA".
3. On page 5550, in the first column, in the 13th line, "closed" should read "located".

BILLING CODE 1505-01-D