
Wednesday
December 2, 1987

Part III

Department of Transportation

Federal Aviation Transportation

14 CFR Parts 121 and 135

Special Federal Aviation Regulation No. 52; Extension of Compliance Date for Certain Large Airplanes Operated Under Part 135, in Other Than Commuter Air Traffic Operations, To Comply With Pending Seat Cushion Flammability Regulation; Final Rule; Request for Comments

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 25477; SFAR No. 52]

See connection

Special Federal Aviation Regulation No. 52; Extension of Compliance Date for Certain Large Airplanes Operated Under Part 135, in Other Than Commuter Air Carrier Operations, To Comply With Pending Seat Cushion Flammability Regulation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This rule extends the compliance date for 90 days, from November 26, 1987, to February 24, 1988, for the requirements in the Federal Aviation Regulations pertaining to the installation of fire-retardant seat cushions in large airplanes operated under Part 135 by on-demand and commercial (unscheduled) operators. This extension has been found to be necessary as a result of several petitions for exemption, and public comment thereon, recently submitted to the FAA. These petitions indicate that some operators failed to take timely action to install the required cushions in certain airplanes by the specified compliance date and that such compliance by these and other operators will be delayed by the unavailability of the necessary seat cushions and the shortage of seat cushion installers available to perform the seat cushion modification. This SFAR extends the compliance date for the affected operators to prevent any possible disruption in passenger service likely to result due to the time the FAA would need to dispose of pending petitions for exemptions prior to the November 26, 1987 compliance date.

DATE: Effective date December 2, 1987. Comments must be received on or before January 4, 1988.

ADDRESS: Mail or deliver comments on this rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25477, Room 915-G, 800 Independence Avenue SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Henri P. Branting, Technical Analysis Branch, Aircraft Engineering Division, AWS-100, Office of Airworthiness, Federal Aviation Administration, 800 Independence

Avenue, SW., Washington, DC 20591, telephone (202) 267-9577.

SUPPLEMENTARY INFORMATION:**Background**

This SFAR was developed in response to several petitions for exemption from requirements in Federal Aviation Regulations (FAR) § 121.312 on behalf of nonscheduled air taxis and commercial operators. Notices soliciting public comments on petitions for exemption were published in the Federal Register. This SFAR is based on both the comments contained in those petitions and the public responses to the notices of the petitions. These comments are reviewed below in the "Discussion of Petitions and Comments." Dockets containing the petitions and public comments are maintained in the FAA Rules Docket, Room 915-G, 800 Independence Avenue, SW., Washington, DC 20591. The petitions and comments may be examined in Room 915-G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

For the most part, the petitioners are, or represent, nonscheduled operators of small transport category airplanes operating under Part 135. These petitioners seek exemptions, to varying extents, from the requirements in the FAR pertaining to the fire resistance of aircraft seat cushions as applicable to large airplanes operated under Part 135.

Part 135 of the FAR, which prescribes the operating rules governing air taxi and commercial operators, applies to both small airplanes carrying not more than 19 passengers and large airplanes carrying not more than 30 passengers. (Part 1 defines a small aircraft as one having a maximum certificated takeoff weight to 12,500 pounds or less, and a large aircraft as one having a maximum certificated takeoff weight greater than 12,500 pounds.) Special Federal Aviation Regulation 38-2 (50 FR 23944; June 7, 1985), "Certification and Operating Requirements" defines "scheduled operations" and "commuter air carriers." Special Federal Aviation Regulation No. 52 is applicable to all other operators of large aircraft under Part 135.

Part 135 was substantially revised and reissued on September 26, 1978 (43 FR 46742; October 10, 1978), in conjunction with Amendment 121-147 as part of a major program to upgrade the level of safety for operations conducted by commuter air carriers, on-demand air taxi operators, and commercial operators. The revision of Part 135 also recognized the need for greater operational flexibility in the size of aircraft operated under that part. The

revision to Part 135 raised the size limit of aircraft used in common carriage to those having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less. Larger aircraft operated by a Part 135 certificate holder are required to be operated in accordance with Part 121. Because this revision allowed certificate holders to operate larger and more complex aircraft capable of flying higher and faster with increased passenger loads, the revised Part 135 incorporated changes necessary to deal with the operation of these larger, more complex aircraft.

Sections 135.169 and 135.177 were adopted in the revised Part 135 to require that certain airworthiness provisions for large airplanes operated under Part 135 be maintained at a level consistent with those larger airplanes operated under Part 121. These provisions include cargo compartment fire protection, engine fire protection, emergency evacuation equipment, fire resistance of materials used in compartment interiors, and numerous other airworthiness features. Section 135.169, by specific cross-reference to Part 121, requires that large airplanes operated under Part 135 meet the airworthiness requirements of § 121.213 through § 121.283, § 121.307, and § 121.312. Section 121.312 establishes the requirements for compartment interior materials.

Amendment 121-184, issued October 23, 1984 (49 FR 43188, October 26, 1984), revised § 121.312 to raise substantially the level of passenger protection against both in-flight and post-crash fires. That rulemaking was initiated as a result of investigations of aircraft cabin fires, which indicated that additional measures were needed to enhance protection against such fires. Section 121.312, as revised, requires the installation of highly fire-resistant seat cushions, commonly referred to as fire-blocked cushions, in the cabins of all airplanes, operating under Part 121, which were type certificated after January 1, 1958. The amendment requires that the installation be completed on or before November 26, 1987. Through the use of fire-blocked cushions, that amendment greatly reduces one of the major potential sources of flammable material in a cabin fire, the foam used in the construction of seat cushions.

To facilitate the implementation of the new requirement, the FAA issued a general notice (GENOT) in May 1985 to all air carrier inspectors, outlining administrative procedures pertaining to

findings of compliance. It was pointed out in the GENOT that the applicability of the requirement includes those Part 135 airplanes subject to § 121.312 by reference in § 135.169. This information was available to operators during the early stages of the compliance period. In addition, following a period of notice and public comment, Advisory Circular 25.853-1, Flammability Requirements for Aircraft Seat Cushions, was published September 17, 1986, providing additional information regarding the test procedures specified in the regulation and explaining that the requirement is applicable to airplanes under § 135.169. The pending completion of the fleet upgrading with new fire-blocking cushions exemplifies the firm commitment by industry to a major safety challenge. Within a period of 3 years, the air carrier industry has successfully adapted substantially new technology, materials, and testing methodology to the retrofit of a half-million seats currently in airline service. The SFAR will not effect aircraft operated under Part 121. This is a major tangible improvement in aviation safety.

Discussion

This SFAR extends the compliance date for only a small fraction of seats now in service. The airplanes covered by this SFAR typically seat less than 20 passengers. The FAA estimates that approximately two-thirds of the Part 135 fleet is in full compliance. With ongoing compliance in progress, firm figures regarding the precise number of seats not in compliance are not available. However, the FAA believes that those seats affected by this SFAR would be well less than 4 percent of the total in service.

The FAA has received numerous petitions requesting that the November 26, 1987, compliance date for § 121.312 be extended by varying amounts up to several years, and that Docket No. 28791 pertaining to Amendment 121-184 be reopened for comments from the affected Part 135 operators and the general public. A meeting between the FAA and representatives of one of the petitioners (National Air Transportation Association) was held on October 29, 1987, during which they reemphasized the data submitted with their petition (see Docket No. 25280).

The principal contention offered in support of the petitions is that, for various reasons, many on-demand air carriers operating under Part 135 generally did not become aware until recently that the new seat cushion requirements are applicable to large airplanes operated under Part 135. They say that Amendment 121-184 does not

specifically mention applicability of the rule to large airplanes operated under Part 135. They also contend that the preamble of Notice of Proposed Rulemaking 83-14 (48 FR 46256; October 1, 1983), on which Amendment 121-184 is based, was not sufficiently clear in regard to applicability of the proposed requirements and did not specifically invite Part 135 operators of large airplanes to comment on the proposed rule. As a result, they say that Part 135 operators of large airplanes were not effectively put on notice that they were expected to comply with Amendment 121-184. Several commenters responding to the public notices of the petitions expressed agreement and support of these contentions.

While the preambles of Notice 83-14 and Amendment 121-184 did not call attention specifically to the Part 135 applicability, the wording of both the proposed and final rules is clear. There was no indication in the notice or amendment of any intent to change the standing applicability of airworthiness requirements in Part 121 to large airplanes operated under Part 135, as delineated in §§ 135.169 and 135.177. Parties concerned with the operation of large airplanes under Part 135 did respond to Notice 83-14 and provide comments. While a number of comments concerned the applicability of the proposed seat cushion requirements to smaller transport airplanes, such as those seating less than 44 passengers, no commenter questioned the applicability of the requirements to a certain type of operation. This is discussed in the preamble of Amendment 121-184. The 4-month comment period of Notice 83-14, therefore, provided ample opportunity for anyone to request clarification of any aspect of the proposed rule not clearly understood.

A compliance survey recently taken by the FAA of Part 135 scheduled operators indicates that most operators apparently have understood the applicability of the requirements for some time and they either have placed their airplanes in compliance or plan to meet the November 26, 1987, compliance date. In fact, the FAA is informed that at this time, the majority of airplanes operated by members of the Regional Airline Association in Part 135 commuter operations are already in compliance with the new seat cushion flammability requirements. Some operators have no plans for meeting the compliance date and indicate that certain airplanes might be removed from Part 135 service if they are not properly modified by the compliance date.

Several petitioners and commenters contend that characteristics of smaller transport airplanes reduce the need for fire-retardant cushions. They point out that small transports have a ratio of passengers to exits considerably less than larger transports and can be evacuated more quickly. Also, the smaller cabins are less critical from the standpoint of fire protection. These basic issues were taken into consideration in the adoption of Amendment 121-184, with the conclusion that the use of highly fire-resistant cushions is an improvement in cabin fire safety, which is warranted for transport airplanes regardless of size.

Several petitioners and commenters contend that conditions unique to the operation of small transport airplanes raise practical and economic problems, which make timely compliance difficult. They contend that the economic service life of a seat in a small transport typically is longer than that of an airline passenger seat and that the compliance date should be extended to recognize this and alleviate the economic burden. They point out that seats in small transports often are of individualized or custom design and present problems in obtaining specimens for compliance testing. They also point out that the small number of seats involved in compliance testing and modification, as compared with airline operations, does not afford the ready access to testing and modification services and results in delays in compliance.

While the FAA does not agree that Part 135 operators received inadequate notice of the proposed and final application of § 121.312 to their operations, we do recognize a practical compliance problem for on-demand Part 135 operators, which, at this point, can be most effectively addressed through a 90-day extension of the compliance date. Operators unable to achieve compliance within the 90-day extension of the compliance date may obtain approval for a compliance plan extending the compliance date beyond February 24, 1988. In order to obtain written approval of an additional extension of the compliance date, operators must, not later than January 23, 1988, provide the Administrator with an acceptable compliance plan. The compliance plan must be forwarded to the Director of Airworthiness (AWS-1, 800 Independence Avenue, SW., Washington, DC 20591). The plan must establish that compliance cannot be achieved by February 24, 1988, by providing evidence of good faith efforts to secure the necessary seat materials, modification and installation services,

and require tests and certification thereof. The compliance plan must indicate the anticipated compliance date and be supported by correspondence or other evidence to establish that firm arrangements to accomplish compliance exist. If the compliance plan is acceptable, the FAA will notify each operator in writing. At this time, the FAA knows of no circumstances under which it could approve a compliance plan substantially longer than 90 days.

The petitions for exemption, and comments thereon, indicate that the practical compliance problems being encountered by some operators have become more acute than anticipated in the promulgation of the rule. It also appears that the situation of some operators is the result of their own delay in initiating compliance. In either case, there is a clear indication that the necessary equipment modification cannot be accomplished in a timely manner unless additional time is provided to certain operators where warranted.

There are a limited number of facilities in the United States that can perform fire-blocking seat cushion modification and testing for aircraft. Many of these facilities are unavailable to perform seat cushion refurbishment and testing prior to the compliance deadline, even on an overtime basis, due to a large backlog of aircraft currently undergoing or awaiting modification. The airplanes operated under Part 135, which are subject to this SFAR, pose unique problems from the standpoint of seat cushion compliance testing. Due to the wide variety of airplane models and individual seat designs involved, the retrofit of these airplanes is test intensive, requiring a greater number of individual compliance tests for a given seat population. This has made the task of compliance testing more critical for the Part 135 operators, because it acutely taxes the available seat materials testing resources. Because the preponderance of compliance testing and seat modification for the air carrier fleet in general will have been completed by November 26, 1987, access to and availability of these services will be greatly improved for Part 135 operators after that date. Notwithstanding the fact that failure to comply would be the result of unexcusable delay on the part of some operators, the FAA finds that it would not be in the public interest to allow the possible disruption of passenger service for this segment of the industry that could result if these aircraft were grounded. From the outset, the basic objective of the fire-blocking regulatory

program has been, to the extent possible, to achieve a major fleetwide improvement in cabin fire safety through mutual government and industry cooperation. The compliance extension provided by this SFAR is consistent with that objective.

Good Cause Justification for Immediate Adoption

This SFAR is being adopted without issuance of a notice of proposed rulemaking, because delay could have a significant impact on passenger service without increasing the level of safety. Public comments on the same basic issues raised by this SFAR were obtained in response to the recent notifications in the *Federal Register* of the petitions for exemption. Those petitions for exemption, and the comments thereon, indicated an impending compliance problem of previously unknown magnitude, which could not be addressed practicably or in a timely manner through the exemption process. Issuance of a notice of proposed rulemaking in this case would delay final rule adoption and burden the resources of operators by reducing available lead time for compliance planning. For these reasons, the FAA has concluded that notice and prior public comment are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Whether through their own delay or because of a lack of available technical support, several operators are confronting problems in complying with the seat cushion requirements before the compliance deadline and other operators may likely experience similar problems. Noncompliance would mean that airplanes would be removed from Part 135 service until compliance is accomplished. To avoid widespread disruption of passenger service, the FAA agrees that the compliance date should be extended by 90 days. However, 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. After review of the comments, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulations. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

Economic Summary

The following is a summary of the regulatory evaluation of an SFAR that extends the existing compliance date for 90 days for installation of fire-retardant seat cushions, as required in FAR, § 121.312, in airplanes operated by on-demand and commercial operators under Part 135. The deadline would be extended from November 26, 1987, to February 24, 1988, under this SFAR.

Virtually all seats in commercially-operated aircraft (including aircraft operated under Part 121 and Part 135) will be in compliance with § 121.312 by November 26, 1987. Recent estimates indicate that approximately 500,000 seat cushions have been replaced or refurbished with fire-blocking material. An FAA survey taken in August 1987 indicated that approximately two-thirds of Part 135 aircraft are expected to be in compliance by November 26, 1987. The FAA estimates that the seating capacity of the Part 135 aircraft not in compliance is less than 20,000 seats, or no more than 4 percent of the total number of seats in commercially-operated aircraft. This SFAR is expected to affect less than this.

This rulemaking addresses several petitions for exemption recently submitted to the FAA by Part 135 certificate holders, which indicate that factors unique to certain large aircraft operating as on-demand commuter air carriers under Part 135 may prevent the installation of fire-retardant seat cushions by the specified deadline. These factors include a large backlog of aircraft in seat modification facilities, and high per-seat testing and modification costs due to the small number of seats in the affected Part 135 aircraft. The rule would extend the compliance schedule for 90 days to allow the facilities that can perform fire-blocking seat cushion modifications to eliminate their backlog of aircraft awaiting modification and schedule new orders.

Presently, it is unlikely that many aircraft operators who have not yet installed or equipped their aircraft with fire-blocking seats will be able to do so by the November 26, 1987, compliance deadline. There are a limited number of facilities in the United States that can perform fire-blocked seat cushion modification and testing for aircraft. Many of these facilities are unavailable to perform seat cushion refurbishment or replacement and testing prior to the compliance deadline, even on an overtime basis, due to a backlog of aircraft currently undergoing or awaiting modification. Therefore, at this time, it

will not be possible for many Part 135 operators to have their aircraft equipped with fire-blocking seat cushions by the November 26, 1987, deadline.

The SFAR will not reduce the existing level of safety for the traveling public, but will ensure that on-demand air carriers operating under Part 135 will have the necessary time to install fire-blocking seats, to bring their aircraft into compliance with the enhanced safety levels mandated by § 121.312. This rule will result in unquantifiable benefits for some Part 135 certificate holders by extending the compliance deadline for 90 days, which will allow operators additional time to modify their aircraft, rather than removing them from service. The existing level of safety will not be decreased by this rule, and thus, no additional cost will be imposed on the traveling public or aircraft operators.

Regulatory Flexibility Determination

The FAA has determined that, under the criteria of the Regulatory Flexibility Act of 1980, the extension of the compliance date for 90 days will not have a significant economic impact on a substantial number of small entities. The majority of small entities affected by this regulation represent on-demand operators of Part 135 aircraft, which will be allowed additional time to comply with existing requirements. No additional cost is imposed on Part 135 operators who have already installed fire-retardant seats. Small testing and aircraft modification facilities that install fire-blocking seats are also not significantly affected, since the compliance deadline is extended, but not eliminated under the SFAR, and all affected aircraft must still undergo modification by February 24, 1988.

Trade Impact Assessment

This rule primarily affects domestic on-demand commuter air carriers operating under the rules of Part 135. The regulation, if adopted, would have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Conclusion

This amendment extends the compliance date for 90 days from November 26, 1987, to February 24, 1988, for the requirement in the FAR pertaining to the installation of fire-retardant seat cushions in on-demand and commercial operators operating under Part 135. Because this amendment will not result in an annual effect on the economy of \$100 million or more or a major increase in costs for consumers, industry, or Federal, State, or local government agencies, it has been determined that this is not a major

amendment under Executive Order 12291. In addition, the amendment will have little or no impact on trade opportunities for U.S. firms doing business overseas of foreign firms doing business in the United States.

Since the amendment concerns a matter on which there is a substantial public interest, the FAA has determined that this action is significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, as noted above, the FAA certifies that under the criteria of the Regulatory Flexibility Act, this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities.

A regulatory evaluation of the amendment, including a Regulatory Flexibility determination and Trade Impact Assessment, has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects

14 CFR Part 121

Air Carriers, Aircraft, Airplanes, Air transportation, Aviation safety, Flammable materials, Safety, Transportation.

14 CFR Part 135

Air carriers, Aircraft, Airplanes, Air taxi, Air transportation, Airworthiness, Aviation safety, Safety, Transportation.

The Amendment

Accordingly, Parts 121 and 135 of the Federal Aviation Regulations (14 CFR Parts 121 and 135) are 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, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. In Part 121 the table of contents of Special Federal Aviation Regulations is amended by adding an editorial note for SFAR No. 52 to read as follows:

Special Federal Aviation Regulations

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SFAR No. 52 [Note]

3. The section of Special Federal Aviation Regulations is amended, by adding SFAR No. 52 [Note] to read as follows:

Special Federal Aviation Regulations

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SFAR No. 52

Editorial Note: For the text of SFAR No. 52, see Part 135 of this chapter.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

1. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. In Part 135 the table of contents of Special Federal Aviation Regulations is amended by adding a reference to SFAR No. 52 to read as follows:

Special Federal Aviation Regulations

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SFAR No. 52

3. In Part 135 the section of Special Federal Aviation Regulations is amended, by adding SFAR No. 52 to read as follows:

Special Federal Aviation Regulations

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SFAR No. 52—Extension of Compliance Date of Seat Cushion Flammability Regulation for Large Airplanes Operated Under Part 135 in Other Than Commuter Air Carrier Operations

Contrary provisions of §§ 121.312 and 135.169 of this chapter notwithstanding, for airplanes type certificated after January 1, 1958, after February 24, 1988, seat cushions in any compartment occupied by crew or passengers (except those on flight crewmember seats) in large airplanes operated under Part 135 of this chapter, except large airplanes used in commuter air carrier operations, must comply with the requirements pertaining to fire protection of seat cushions in § 25.853(c), effective November 26, 1984, and Appendix F to Part 25 of this chapter, effective November 26, 1984, unless an alternative compliance plan has been approved by the Administrator.

For airplanes type certificated after January 1, 1958, after November 26, 1987, seat cushions in any compartment occupied by crew or passengers (except those on flight crewmember seats) in large airplanes operated under Part 135 of this chapter and used in commuter air carrier operations must comply with the requirements pertaining to fire protection of seat cushions in § 25.853(c), effective November 26, 1984, and Appendix F to Part 25 of this chapter, effective November 26, 1984.

This Special Federal Aviation Regulation terminates on December 1, 1988.

Issued in Washington, DC, on November 25, 1987.

T. Allan McArtor,
Administrator.

[FR Doc. 87–27626 Filed 11–27–87; 1:58 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 25477; SFAR No. 52]

**Special Federal Aviation Regulation
No. 52; Extension of Compliance Date
for Certain Large Airplanes Operated
Under Part 135, in Other Than
Commuter Air Carrier Operations, To
Comply With Pending Seat Cushion
Flammability Regulation**

Correction

In rule document 87-27626 beginning on page 45910 in the issue of Wednesday, December 2, 1987, make the following correction:

On page 45911, in the second column, in the fifth and sixth lines, "October 1, 1983" should read "October 11, 1983".

BILLING CODE 1505-01-D
