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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA-2011-0186; Amendment Nos. 121-362]

RIN 2120-AK14

Lavatory Oxygen Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action adds termination criteria and an expiration date to Special Federal Aviation Regulation 111, which temporarily authorizes variances from existing standards related to the provisioning of supplemental oxygen inside lavatories. This action is necessitated by the publication of Airworthiness Directive 2012-11-09, which mandates actions that restore supplemental oxygen to lavatories.

DATES: This final rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see “How To Obtain Additional Information” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Airframe and Cabin Safety Branch, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW, Renton, WA 98057-3356; telephone: (425) 227-2136; e-mail: jeff.gardlin@faa.gov.

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SUPPLEMENTARY INFORMATION:

Good Cause

The FAA finds that notice and public comment to this final rule are unnecessary, since this amendment is a conforming change in light of the rulemaking activity that led to AD 2012-11-09.¹ Interested parties have been offered an opportunity to comment on the issues covered by this SFAR, and the FAA has considered all comments. *See* Airworthiness Directive (AD) 2012-11-09; 77 FR 38000, June 26, 2012.

Authority for this Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General Requirements." Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft; regulations and minimum standards in the interest of safety for inspecting, servicing, and overhauling aircraft; and regulations for other practices,

¹ AD 2012-11-09, Airworthiness Directives; Various Transport Category Airplanes (Docket No. FAA-2012-0102), 77 FR 38000, June 26, 2012.

methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it revises the safety standards for design and operation of transport category airplanes.

I. Overview of Final Rule

The FAA issued Special Federal Aviation Regulation (SFAR) 111 to address the noncompliance with the regulations created by compliance with AD 2011-04-09.² Because no solution was available at that time that would both comply with the AD and provide oxygen to occupants of lavatories, the SFAR was intended to be in effect until superseded by further action.

As discussed in the preambles to the notice of proposed rulemaking (NPRM)³ and final rule adopting AD 2012-11-09, the FAA chartered an Aviation Rulemaking Committee (ARC) to identify methods of restoring oxygen in lavatories without creating security vulnerabilities. The FAA is in the process of developing rulemaking to adopt new standards for chemical oxygen generator system installations, based on the ARC recommendations, and has issued Policy Statement PS-ANM-25-04, *Chemical Oxygen Generator Installations*. Applicants may use the guidance in that policy statement for approval of chemical oxygen generator systems. Further, the FAA has issued AD 2012-11-09, which mandates installation of a supplemental oxygen system in all airplanes affected by AD 2011-04-09.

The FAA is now establishing an expiration date for SFAR 111 that coincides with the compliance date of AD 2012-11-09. While we fully expect that the

² AD 2011-04-09, Airworthiness Directives; Various Transport Category Airplanes Equipped with Chemical Oxygen Generators Installed in a Lavatory (Docket No. FAA-2011-0157). 76 FR 12556, March 8, 2011.

³ 77 FR 11418, February 27, 2012.

compliance time specified in the AD is sufficient to enable all affected operators to comply within that time, it is possible there will be circumstances beyond an operator's control under which the operator's compliance will be delayed. If the delay is adequately justified, per § 39.19, the FAA may approve an alternative method of compliance (AMOC) or extension of compliance time. To avoid having to initiate additional rulemaking or to grant a separate exemption from the regulations referenced in SFAR 111, paragraph (e) would allow for an extension of the expiration of the SFAR corresponding to the duration of any such extension of compliance time.

Provisions of SFAR 111

The applicability of the SFAR has been amended to conform to AD 2012-11-09. The amended SFAR applies to persons required to comply with AD 2012-11-09, but only for airplanes on which the actions required by the AD have not yet been accomplished. The effect of this limitation is that, once those actions are accomplished on an airplane, it is no longer eligible for the relief or subject to the requirements provided by this SFAR, and the operator is again required to comply with the applicable rules specified in paragraph (b) of the SFAR.

Until compliance with AD 2012-11-09 is accomplished, the amended SFAR allows all air carriers that were required to comply with AD 2011-04-09 to continue to operate without complying with specific regulations pertaining to supplemental oxygen systems. The amended SFAR also permits manufacturers and modifiers of transport category airplanes to deliver or return to service airplanes affected by the FAA directive with the same relief. In addition, the amended SFAR requires certain procedural and configuration enhancements to reduce the safety risk to passengers in the unlikely event that they should

need oxygen while in a lavatory. Paragraph (c) of the amended SFAR requires that when a person described in paragraph (a) of this section has modified airplanes as required by Airworthiness Directive 2011-04-09, the affected airplanes must be returned to service with a note in the airplane maintenance records that the modification was done under the provisions of this SFAR.

Paragraph (h) of AD 2011-04-09 also contains a provision for regulatory relief that is in effect until superseded by other rulemaking. AD 2012-11-09 superseded AD 2011-04-09 and contains a similar provision for superseding future rulemaking to allow for the progressive retrofit of the affected fleet. As such, the amended SFAR is only needed to allow for deliveries, modifications and other entries into service that might otherwise not be allowed due to noncompliance with supplemental oxygen requirements, until the compliance date of AD 2012-11-09.

II. Background

On March 8, 2011, the FAA published an interim final rule, request for comments (Amendment Nos. 21-94, 25-133, 121-354, 129-50; SFAR 111), on security considerations for lavatory oxygen systems in the *Federal Register* (76 FR 12550). The FAA had become aware of security vulnerability with certain types of oxygen systems installed inside the lavatories of most transport category airplanes. As a result, the FAA mandated that these oxygen systems be rendered inoperative until the vulnerability could be eliminated. However, by rendering the oxygen systems inoperative to comply with that mandatory action, operators were out of compliance with the requirements of Title 14, Code of Federal Regulations (14 CFR) §§ 25.1447, 121.329, and 121.333.

In addition to the fleet of in-service airplanes, newly manufactured airplanes and airplanes undergoing other modification also needed to render the oxygen systems in the lavatories inoperative. SFAR 111 was needed so the affected airplanes could continue operating until the issue was resolved.

The FAA then chartered an Aviation Rulemaking Committee (ARC) to make recommendations regarding new standards for the oxygen system installation, as well as how to implement those standards. The ARC submitted its recommendations to the FAA, and the FAA intends to use those recommendations as the basis for new standards and new installation approvals.

III. Discussion of Public Comments and Final Rule

The FAA received comments from ten commenters regarding SFAR 111. Those commenters were: Aerox Aviation Oxygen Systems, Inc., The Boeing Company, and eight individual commenters. The FAA's disposition of those comments was published in the *Federal Register* on February 27, 2012 (77 FR 11385.) The FAA determined that no revisions to SFAR 111 were necessary based off comments received.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits

agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

This final rule adds an expiration date to SFAR 111 that coincides with the compliance date for AD 2012-11-09.

The FAA has, therefore, determined that this final rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) establishes "as

a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.” To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The costs to small airline operators to install lavatory oxygen generating systems have been addressed in the economic analysis associated with the rulemaking for AD-2012-11-09. This final rule ensures that the expiration date of SFAR 111 will coincide with the compliance date of AD-2012-11-09, but also allows for an extension of compliance time if the delay is adequately justified.

Therefore as the FAA Acting Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it responds to a domestic safety objective and is not considered an unnecessary obstacle to international trade.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$143.1 million in lieu of \$100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a “significant energy action” under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. How to Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet —

1. Search the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visit the FAA’s Regulations and Policies Web page at http://www.faa.gov/regulations_policies/ or
3. Access the Government Printing Office’s Web page at <http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request (identified by amendment or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to <http://www.regulations.gov> and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the FOR FURTHER INFORMATION CONTACT heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of Title 14, Code of Federal Regulations as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40113, 40119, 41706, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 44912, 46105.

Subpart DD—Special Federal Aviation Regulations

2. Revise § 121.1500 to read as follows:

§ 121.1500 SFAR No. 111—Lavatory Oxygen Systems.

- (a) *Applicability.* This SFAR applies to the following persons:

- (1) All operators of transport category airplanes that are required to comply with AD 2012-11-09, but only for airplanes on which the actions required by that AD have not been accomplished.

- (2) Applicants for airworthiness certificates.

- (3) Holders of production certificates.

- (4) Applicants for type certificates, including changes to type certificates.

- (b) *Regulatory relief.* Except as noted in paragraph (d) of this section and contrary provisions of 14 CFR part 21, and 14 CFR 25.1447, 119.51, 121.329, 121.333 and 129.13, notwithstanding, for the duration of this SFAR:

- (1) A person described in paragraph (a) of this section may conduct flight operations and add airplanes to operations specifications with disabled lavatory oxygen

systems, modified in accordance with FAA Airworthiness Directive 2011-04-09, subject to the following limitations:

(i) This relief is limited to regulatory compliance of lavatory oxygen systems.

(ii) Within 30 days of [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], all oxygen masks must be removed from affected lavatories, and the mask stowage location must be reclosed.

(iii) Within 60 days of [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] each affected operator must verify that crew emergency procedures specifically include a visual check of the lavatory as a priority when checking the cabin following any event where oxygen masks were deployed in the cabin.

(2) An applicant for an airworthiness certificate may obtain an airworthiness certificate for airplanes to be operated by a person described in paragraph (a) of this section, although the airplane lavatory oxygen system is disabled.

(3) A holder of a production certificate may apply for an airworthiness certificate or approval for airplanes to be operated by a person described in paragraph (a) of this section.

(4) An applicant for a type certificate or change to a type certificate may obtain a design approval without showing compliance with § 25.1447(c)(1) of this chapter for lavatory oxygen systems, in accordance with this SFAR.

(5) Each person covered by paragraph (a) of this section may inform passengers that the lavatories are not equipped with supplemental oxygen.

(c) Return to service documentation. When a person described in paragraph (a) of this section has modified airplanes as required by Airworthiness Directive 2011-04-09, the affected airplanes must be returned to service with a note in the airplane maintenance records that the modification was done under the provisions of this SFAR.

(d) Expiration. This SFAR expires on September 10, 2015, except this SFAR will continue to apply to any airplane for which the FAA approves an extension of the AD compliance time for the duration of the extension.

Issued in Washington, DC, on January 18, 2013.

Michael P. Huerta
Administrator

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