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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 91, 121, 125, and 129

[Docket No. FAA-1999-6411; Amendment Nos. 21-82, 91-272, 121-285, 125-140, 129-35, Special Federal Aviation Regulation No. 88-1]

RIN 2120-AG62

Extension of Compliance Times for Fuel Tank System Safety Assessments BF 12/4/02

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments

SUMMARY: This final rule extends the compliance deadline for supplemental type certificate holders to complete safety assessments of their fuel tank systems, and any system that may affect the fuel tank system, and to develop design changes and maintenance programs needed to correct unsafe conditions. It also extends the compliance time for the affected operators to incorporate instructions for maintenance and inspection of the fuel tank system into their maintenance or inspection programs. This action is needed to allow supplemental type certificate holders additional time to complete their compliance submittals using a newly identified method of completing their safety assessments and identifying corrective actions without acquiring information from the type certificate holders. Because the operators are dependent upon the supplemental certificate holders for showing compliance with the operating rules, this rule allows them the same time extension.

DATES: This final rule is effective December 9, 2002. ~~[insert date of publication in the Federal Register]~~. Comments must be submitted on or before February 7, 2003 ~~[insert date 60 days after date of publication]~~.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-1999-6411 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Mike Dostert, Transport Airplane Directorate, Propulsion/Mechanical Systems Branch, ANM-112, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (425) 227-2132.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134, February 26, 1979), however, provide that, to the maximum extent possible,

operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from this amendment. The most helpful comments reference a specific portion of the amendment, explain the reason for any recommended changes, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the ADDRESSES section.

The FAA will consider all comments received on or before the closing date for comments. Late filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

If you want the FAA to acknowledge receipt of your comments on this amendment, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Final Rule

You can get an electronic copy of this final rule using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search).

(2) On the search page , typing in the last four digits of the Docket number shown at the beginning of this final rule, and clicking on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, clicking on the final rule.

You can also get an electronic copy using the Internet through the Office of Rulemaking's web page at http:/www.faa.gov/avr/armhome.htm, or the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this final rule.

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. Any small entity that has a question regarding this document may contact their local FAA official, or the person listed under FOR FURTHER INFORMATION CONTACT. You can find out more about SBREFA on the Internet at, http://www.faa.gov/avr/arm/sbrefa.htm. For more information on SBREFA, e-mail us at 9-AWA-SBREFA@faa.gov.

Background

Amendment 25-102 and SFAR 88

Following the 1996 TWA 800 accident, which was caused by an explosion in the center wing fuel tank, the FAA issued regulations to establish several new transport

airplane fuel tank safety requirements (66 FR 23086, May 7, 2001). The final rule, which was effective June 6, 2001, included:

1. Amendment 21-78 (SFAR 88) which requires type certificate (TC) and supplemental type certificate (STC) holders to:

- conduct a revalidation of the fuel tank system designs on the existing fleet of transport category airplanes carrying 30 or more passengers or a payload of 7,500 lbs. or more;
- develop all design changes required to demonstrate they meet the new ignition prevention requirements; and
- develop fuel tank maintenance and inspection instructions,

2. Amendments 91-266, 121-282, 125-36, and 129-30, which require certain operators to incorporate FAA-approved fuel tank maintenance and inspection requirements into their maintenance or inspection programs, and

3. Amendment 25-102, which adopts new airworthiness standards for future designs to impose ignition prevention design and maintenance requirements (§ 25.981(a) & (b) and paragraph H25.4 of appendix H), and fuel tank flammability requirements (§ 25.981(c)).

Amendment to SFAR 88 to allow equivalent safety findings

On September 10, 2002, the FAA amended SFAR 88 by incorporating provisions into the rule that allow for findings of equivalent safety (Amendment 21-82, 67 FR 67490). This amendment added a paragraph that allows the FAA to approve a type certificate holder's required submission based on a finding that it provides an equivalent

level of safety to full compliance with the SFAR. SFAR 88 is a part 21 rule which did not provide certificate holders the ability to make compliance findings based upon a finding of equivalent safety, as is available when making findings of compliance with part 25 for new or amended type certificates. Therefore, Amendment 21-82 provides a "level playing field" between pending applicants and current holders of TCs. It also allows applicants to propose other means to achieve the safety goals of the SFAR such as flammability reduction using polyurethane foam or nitrogen inerting.

Discussion of SFAR 88 and this Amendment

SFAR 88 requires that holders of type certificates and supplemental type certificates review the designs of fuel tank systems of large transport category airplanes, and develop design changes and maintenance and inspection programs based on the findings of those reviews. The reviews are conducted using the ignition prevention requirements that were adopted for new or amended type designs in § 25.981. Reports documenting compliance must be submitted to the FAA by December 6, 2002.

When the SFAR was written, the FAA believed that, to the extent that STC holders would be dependent upon the TC holders for the information needed to show compliance with the SFAR, this information would be available either from the original certification data or through business agreements with the TC holders. For a variety of reasons, this information has generally not been made available to the STC holders.

Since issuance of SFAR 88, we have gained experience and now recognize that STC holders can show compliance without access to data from the TC holders. On August 27, 2002, about 3 months prior to the compliance date for the SFAR, we conducted a seminar in Chicago with STC holders where methods for showing

compliance without TC data were presented. (Presentations from this seminar can be accessed at the following web site: www.faa.gov/certification/aircraft/sfar88/index.htm) These methods allow STC holders to conduct the safety assessment of their STC up to the interface with the TC holder's design, and to define service information (both maintenance instructions and design changes) needed to correct any deficiencies identified in the assessment. For all safety issues associated with the interface between the STC and the TC holder's design, the STC holder can reference the design configuration control limitations defined by the TC holder, which will be sufficient to address these issues.

Until the August seminar, STC holders did not have access to this information regarding a means of compliance that is not dependent on access to TC holder data. Because of the widespread belief that access to these data was necessary, many STC holders had not made significant progress in assessing their designs. A six-month extension of the compliance time for STC holders will allow them to complete their compliance submittals using the method described above. This amendment therefore provides an extension of six months for STC holders to the compliance time of December 6, 2002, specified in SFAR 88.

It should be noted that the compliance deadline is not being extended for TC holders; and we expect them to comply by the original deadline. As noted previously, Amendment 21-82 allows TC holders to use factors providing an equivalent level of safety in complying with SFAR 88. Under this provision, some TC holders have expressed an intention to provide fuel tank inerting systems as an alternative to some design changes that would otherwise be necessary to eliminate ignition sources. Because

these inerting systems involve new technology, the TC holders have indicated that they will not be able to complete the design changes by the deadline. Given the potential safety benefits of these systems, we have stated that a short delay in providing these design changes may be acceptable for a finding of equivalent safety, provided that the TC holders otherwise comply with SFAR 88's system safety assessment and maintenance program requirements by the December 6, 2002, deadline.

Operators are dependent upon STC holders for showing compliance with the operating rules (parts 91, 121, 125, and 129) that require development of an approved maintenance program by June 2004. Therefore this rulemaking would also provide a six-month extension of the compliance times for these rules. This extension will also enable operators to fully address any maintenance program changes associated with fuel tank inerting system changes that TC holders may develop, as discussed previously.

Since this rule simply extends the compliance time for STC holders and operators, it should not result in additional costs and therefore is not considered "significant" for purposes of Executive Order 12866, DOT Regulatory Policies and Procedures, or the Regulatory Flexibility Act, and it does not require preparation of a regulatory evaluation.

Paperwork Reduction Act

There are no new requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The

FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Good Cause for Immediate Adoption

Sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedures Act (APA) (5 U.S.C. Sections 553(b)(3)(B) and 553(d)(3)) authorize agencies to dispense with certain notice procedures for rules when they find "good cause" to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Section 553(d)(3) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day delayed effective date requirement in section 553.

In the context of the APA, "impracticable" means that, if notice and comment procedures are followed, they would defeat the purpose of the rule. As explained previously, the purpose of this final rule is to prevent a large number of STC holders from being in noncompliance with SFAR 88 as of the December 6, 2002, deadline by extending this deadline by six months. There is no way we could issue a notice, receive comments, and issue a final rule before then. Therefore, it is "impracticable" to provide notice and opportunity to comment.

This final rule also provides a six-month extension of the compliance time for the operating rules, which originally had a deadline of June 2004 (18 months after the deadline for SFAR 88). The need to extend this deadline results directly from the extension for STC holders. We acknowledged in the original fuel tank safety final rule that the operators are heavily dependent on TC and STC holders' compliance, and we

gave the operators 18 months after the SFAR 88 compliance deadline with the understanding that they would need that entire time to develop the maintenance program changes required by the operating rules. Nothing has occurred to make us reconsider that decision, so the extension of the STC holder deadline necessitates extending the operating rule deadline, as well.

Providing notice and opportunity to comment on this extension would create uncertainty for the operators and could be highly disruptive. Since it is important for operators to be able to plan their compliance activities, and notice and comment procedures would make this impossible, we also find that providing notice and opportunity to comment are impracticable for the operating rule extension.

For the same reasons, we find good cause to make this rule effective immediately upon publication.

Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to 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 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, use them as 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.)

In conducting these analyses, the FAA has determined this rule (1) 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; (2) will not have a significant impact on a substantial number of small entities; (3) will have little effect on international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

For regulations with an expected minimal economic impact, the above-specified analyses are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in the proposed regulation. The FAA has determined that there are minimal costs associated with this final rule and the safety benefits contemplated by the SFAR will still be achieved. Since current circumstances preclude industry from meeting the original compliance time, a 6-month extension will impose de minimus economic impact.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective 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 that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. 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 proposed or final 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. If, however, an agency determines that a proposed or final 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.

This action simply provides a six-month extension of the original compliance times. The FAA therefore expects this final rule to impose no cost on small entities. Consequently, the FAA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not

considered unnecessary obstacles. 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 has determined that it will not result in additional costs to supplemental type certificate holders or operators and will have a minimal effect on international trade

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act 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 a $100 million or more expenditure (adjusted annually for inflation) 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."

This final rule does not contain such a mandate; therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

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

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the regulation clearly stated?
- Does the regulation contain technical language or jargon that interferes with their clarity?
- Would the regulation be easier to understand if it was divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the regulation?

Please send your comments to the address specified in the ADDRESSES section.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this final rule qualifies for a categorical exclusion.

Energy Impact

The energy impact of the final rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, as amended (42 U.S.C. 6362), and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Parts 21, 91, and 125

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 121

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

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 21, 91, 121, 125, and 129 of Title 14, Code of Federal Regulations, as follows:

PART 21 – CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for part 21 continues to read:

Authority: 42 U.S.C. 7572; 40105, 40113; 44701-44702, 44707. 44709, 44711, 44713, 44715, and 45303.

2. SFAR No. 88-1 is amended ~~in~~ by revising the introductory text of paragraph 2 and by adding a new paragraph 2(e) to read as follows:

BF 12/4/02

SFAR No. 88 – Fuel Tank System Fault Tolerance Evaluation Requirements

* * * * *

2. Compliance: Each type certificate holder, and each supplemental type certificate holder of a modification affecting the airplane fuel tank system, must accomplish the following within the compliance times specified in paragraph (e) of this section:

* * * * *

(e) Each type certificate holder must comply no later than December 6, 2002, or within 18 months after the issuance of a type certificate for which application was filed before June 6, 2001, whichever is later; and each supplemental type certificate holder of a modification affecting the airplane fuel tank system must comply no later than June 6, 2003, or within 18 months after the issuance of a supplemental type certificate for which application was filed before June 6, 2001, whichever is later.

PART 91 – GENERAL OPERATING AND FLIGHT RULES

3. The authority citation for part 91 continues to read:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 - 1355, 1401, 1421-1431, 1471, 1472, 1502, 1510, 1522, and 2121-2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat 1180); 42 U.S.C. 4321 et. seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 21, 1983).

4. Amend § 91.410 by revising the first sentence ~~introductory text~~ of paragraph (b) to read as follows: BF 12/4/02

§ 91.410 Special maintenance program requirements.

* * * * *

(b) After December 6, 2004, no person may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958, and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more, unless instructions for maintenance and inspection of the fuel tank system are incorporated into its inspection program. * * *

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

5. The authority citation for part 121 continues to read:

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

6. Amend § 121.370 by revising the first sentence ~~introductory text~~ of paragraph (b) to read as follows:

BF 12/18/02

§ 121.370 Special maintenance program requirements.

* * * * *

(b) After December 6, 2004, no certificate holder may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958, and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more, unless instructions for maintenance and inspection of the fuel tank system are incorporated in its maintenance program. * * *

PART 125 - CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

7. The authority citation for part 125 continues to read:

Authority: 49 U.S.C. 106(g), 40113, 44701-44702, 44705, 44710-44711, 44713, 44716-44717, 44722.

8. Amend § 125.248 by revising the ~~introductory text~~ first sentence of paragraph (b) to read as follows:

§ 125.248 Special maintenance program requirements.

* * * * *

(b) After December 6, 2004, no certificate holder may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958, and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more unless instructions for maintenance and inspection of the fuel tank system are incorporated in its inspection program. * * *

PART 129 - OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

9. The authority citation for part 129 continues to read:

Authority: 49 U.S.C. 106(g), 40104-40105, 40113, 40119, 44701-44702, 44712, 44716-44717, 44722, 44901-44904, 44906.

10. Amend § 129.32 by revising the ~~introductory text~~ first sentence of paragraph (b) to read as follows:

BF 12/4/02

§ 129.32 Special maintenance program requirements.

* * * * *

(b) For turbine-powered transport category airplanes with a type certificate issued after January 1, 1958, and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more,

no later than December 6, 2004, the program required by paragraph (a) of this section must include instructions for maintenance and inspection of the fuel tank systems. * * *

Issued in Washington, DC, on December 3, 2002.

Marion C. Blakey

Marion C. Blakey

Administrator

Certified to be a True Copy

Bonnie Fritts

Bonnie Fritts