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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, and 135

[Docket No. FAA-2000-7119; Amdt. Nos. 121-280 and 135-78]

RIN 2120-AG89

Emergency Medical Equipment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; partial revised compliance date.

SUMMARY: The Federal Aviation Administration (FAA) is extending the compliance date for batteries installed in automated external defibrillators (AEDs) to meet the requirements of a Technical Standard Order (TSO). The primary manufacturer of AEDs has only recently applied for approval of its battery. Not enough approved batteries exist to equip the entire air carrier fleet by the original compliance date of April 12, 2004. Extension of the compliance date will have a negligible impact on safety, will allow AEDs to continue to be used, and will allow for further approval and production of batteries that meet the TSO requirements.

DATES: This amendment is effective ~~April 9~~ May 12, 2004. Power sources for automated external defibrillators must meet the standards of the applicable TSO by April 30, 2005.

JC 4/12/2004

FOR FURTHER INFORMATION CONTACT: David H. Rich, AIR-120, Aircraft Certification Service, Aircraft Engineering Division, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267-7141.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 2001 (66 FR 19028), the FAA amended the aircraft operating rules to require Part 121 air carriers to carry automated external defibrillators (AEDs) on their aircraft as of April 12, 2004. All required electronic equipment that uses lithium batteries as a separate power source must meet the requirements of Technical Standard Order (TSO) C97 or C142 when used onboard aircraft.

Despite several years' notice, the primary manufacturer of AEDs has only recently applied for TSO approval for its AED batteries. The application has not yet been approved and batteries that comply with the TSO have not been produced. Since the batteries for AEDs must be tailored for the specifications of a particular manufacturer's unit, the batteries are not interchangeable nor are they otherwise commercially available. One AED supplier has an approved battery, but information available to the FAA suggests that it has a much smaller market share for its product. The FAA does not have any reliable information on how many AEDs from different manufacturers are affected by this lack of approved batteries.

Although the regulation requiring the carriage of AEDs is not effective until May 12, 2004, air carriers have equipped their aircraft with them in recognition of their value as a potentially lifesaving device. Rather than delay the requirement to carry AEDs for the lack of an approved battery, the FAA has determined that it is better to allow the AEDs to continue to be used until the original batteries can be replaced.

There is no safety issue in allowing the original batteries to remain in operation for the interim period. The FAA added the requirement that the batteries meet the specifications of a TSO because all lithium power sources for electronic equipment that used on aircraft are subject to agency oversight of their design and manufacture. The FAA is not aware of any particular problem with the original batteries, and does not believe that additional time in service on board commercial aircraft poses a particular risk to the flying public. While compliance with the Technical Standard Order is important over the long term, the FAA concludes that any short term risk posed by unapproved batteries is outweighed by the benefit of having the devices on board until approved batteries can be installed.

Accordingly, the FAA is amending 14 CFR Part 121, Appendix A, to include a compliance date of April 30, 2005, for the power source for required AEDs to meet the applicable TSO. This change in the compliance date does not affect the requirement to carry an approved AED, or the requirements for first aid kits, emergency medical kits, crew training in usage of any device, or any other provision of the Appendix.

Economic Summary

The FAA estimates that as many as 6,000 airplanes in the Part 121 fleet may be unable to comply with the regulation as of April 12 because of the unapproved battery issue. This rule extends the compliance time for operators to install a power source on automated external defibrillators that complies with the applicable TSO for that item. If the FAA left the original compliance date in place, approximately 80 operators of Part 121 aircraft, including many major air carriers, would be unable to comply for a lack of

approved batteries. Those operators could be subject to fines or other enforcement action. The additional time provided by this extension will allow the AED manufacturers to complete the approvals necessary to get their batteries approved for use on aircraft and produce sufficient batteries for their air carrier customers.

The FAA is unable to provide a quantitative estimate of the costs that would result from a failure to relieve this requirement, though the agency believes they would be significant. Further, it would be a disservice to the flying public to delay the requirement to carry AEDs since they represent a significant benefit to commercial aircraft passengers. The risk of continuing to use unapproved batteries is considered less than the benefit of having the equipment available at all. A change in this compliance date will both relieve a burden beyond the control of the regulated carriers and continue to provide a benefit to the flying public.

Good Cause for "No Notice"

Sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedures Act (APA) (5 U.S.C. §§ 553(b)(3)(B) and 553(d)(3)) authorize agencies to dispense with certain notice procedures for rules when they find good cause exists to do so. Under §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." The FAA finds that notice and public comment on this change to the compliance date are both impracticable and contrary to the public interest. Notice and comment are impracticable in this instance because they

would defeat the need for the rule change. Air carriers using certain equipment are unable to comply with the regulation because of a parts availability problem beyond their control. The FAA would not be able to accomplish notice and comment rulemaking until after the compliance date in the current regulation. Further, the FAA finds that the carriage of AEDs on commercial aircraft represent a significant benefit to the flying public, and delaying implementation of the rule for availability of an approved battery is contrary to that interest when little safety risk is involved for a short time.

Good Cause for Immediate Adoption

Section 553(d) of the APA requires that rules become effective no less than 30 days after their issuance. Paragraph (d)(1) allows an agency to make a rule effective immediately if is relieving in nature. This final rule extends a compliance date, relieving the requirement to have equipment installed that may not be available. Accordingly, this rule is effective on issuance.

List of Subjects

14 CFR Part 121

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

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 121 of Title 14, Code of Federal Regulations (14 CFR Part 121) 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), 40113, 40119, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 44912, 46105.

2. Amend Appendix A, Automated External Defibrillators, paragraph 2, to read as follows:

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2. On and after April 30, 2005, meet FAA Technical Standard Order requirements for power sources for electronic devices used in aviation as approved by the Administrator.

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Issued in Washington, DC on April 8th, 2004

Marion Blakey

Marion C. Blakey

Administrator

Certified to be a True Copy

John M. Allen