DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2004–19947; Amendment No. 91–285]

RIN 2120–AI42

Pyrotechnic Signaling Device Requirements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This direct final rule removes the requirement for a pyrotechnic signaling device required for aircraft operated for hire over water and beyond power-off gliding distance from shore for air carriers operating under part 121 unless it is part of a required life raft. All other operators will continue to be required to have onboard one pyrotechnic signaling device if they operate aircraft for hire over water and beyond power-off gliding distance from shore. The FAA amends the rule to remove the redundancy and regulatory burden for air carriers operating under part 121.

DATES: Effective February 7, 2005. The FAA must receive comments on this direct final rule by January 26, 2005.

ADDRESSES: You may send comments to Docket Number FAA–2004–19947 using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets. This will include the name of the individual sending the comment (or signing the comment for an association, business, labor union). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Docket: To read background documents or comments received, go to *http://dms.dot.gov.* You may also go to Room PL–401 on the plaza of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joe Keenan, Air Transportation Division (AFS–220), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone No. (202) 267–9579.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites anyone to take part in this rulemaking by sending written comments, data, or views. We also invite comments about the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file all comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, in the public docket. 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 of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before this direct final rule becomes effective, we will consider all comments we receive by the closing date for comments. We may change this rule because of the comments we receive. For more information about direct final rule procedures, see the ''Direct Final Rule Procedures'' later in this document.

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

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page—*http://dms.dot.gov/search.*

(2) On the search page type in the last five digits of the Docket number of this notice (19947), click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm* or the Federal Register's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by filing 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 rulemaking.

Small Entity Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities about information on, and advice about, compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question about this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can also find more information on SBREFA on the FAA's Web page at *http://www.faa.gov/avr/arm/sbrefa.cfm.*

Background

On February 25, 2004, the FAA published a ''Review of Existing Regulations'' proposal in the **Federal Register** (69 FR 8575; docket number FAA–2004–17168) seeking comments on regulations that it should amend, remove, or simplify. The FAA stated that the intent of this review was to ''identify regulations that impose undue regulatory burden, are no longer necessary, or overlay, repeat, or conflict with other Federal regulations.'' Further, the FAA stated that it would review comments and ''point out, where appropriate, how we will adjust our regulatory priorities.''

The FAA received comments from the National Air Carrier Association

(NACA), the Air Transport Association (ATA), and Southwest Airlines (SWA) that address § 91.205(b)(12), a regulation that has been an issue of both petitions for exemption and enforcement policy for some time. That issue is whether air carriers conducting operations under part 121 should be required to comply with § 91.205(b)(12). Specifically, paragraph (b)(12) requires aircraft that operate for hire, over water, and beyond power off gliding distance from shore to carry one pyrotechnic signaling device. The relevant parts of § 91.205 read as follows:

§ 91.205 Powered civil aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements.

(a) *General.* Except as provided in paragraphs (c)(3) and (e) of this section, no person may operate a powered civil aircraft with a standard category U.S. airworthiness certificate in any operation described in paragraphs (b) through (f) of this section unless that aircraft contains the instruments and equipment specified in those paragraphs (or FAA-approved equivalents) for that type of operation, and those instruments and items of equipment are in operable condition.

(b) *Visual-flight rules (day).* For VFR flight during the day, the following instruments and equipment are required:

(1)–(11)* * *

(12) If the aircraft is operated for hire over water and beyond power-off gliding distance from shore, approved flotation gear readily available to each occupant and at least one pyrotechnic signaling device. As used in this section, ''shore'' means that area of the land adjacent to the water which is above the high water mark and excludes land areas which are intermittently under water.

(13)–(17) and (c) * * *

(d) *Instrument flight rules.* For IFR flight, the following instruments and equipment are required:

(1) Instruments and equipment specified in paragraph (b) of this section, and, for night flight, instruments and equipment specified in paragraph (c) of this section.

(2)–(9) and (e)–(h) * * *

SWA states that the FAA should rescind § 91.205(b)(12) for part 25 airplanes because mandating a flare gun be carried in the cockpit is an unnecessary and hazardous requirement that is without aviation safety justification. SWA asserts that the risk of a modern multi-engine turbo jet experiencing a total power loss on take-off and not being able to return to the departure airport for an emergency landing is extremely low. SWA states that even if an aircraft had to ditch in the ocean, departure radar control would easily pinpoint its location. SWA believes the minimal value that a flare gun would provide is far outweighed by the danger it imposes to the cockpit. SWA states that this device is hazardous because if it is triggered in flight it cannot be extinguished.

The ATA asserts that the rule requires operators that do not operate with life rafts and survival equipment as required by § 91.509 to carry pyrotechnic signaling devices. This association states that eliminating the rule's applicability to air carriers would eliminate the purchase of the devices and additional engineering, manufacture, approval, and installation of security boxes. The association also points out that the elimination would also save unnecessary incorporation into maintenance programs and special training of flight crews.

The NACA states that when this rule was written, pyrotechnic flares were the state-of-art signaling devices. This association states that since that time we have emergency locator transmitters (ELTs), enhanced ELTs, better communications, radar surveillance, and more practical and timely options.

Petitions for Exemption From § 91.205(b)(12)

The FAA has consistently denied petitions for exemption from § 91.205(b)(12), partly on the basis that a grant of exemption would be more appropriate to an entire class of operators and thus should be accomplished under rulemaking. In recent years, however, the FAA has received several petitions that present compelling arguments for relief. America West, in a petition dated June 17, 2004, presents a probability analysis, based on the FAA's model in developing Special Federal Aviation Regulation (SFAR) 88 for fuel systems, that finds the probability of an in-flight shut down is far less likely than ''extremely improbable'' or ''extremely remote,'' as defined by the FAA in Appendix B: ''SFAR 88—Mandatory Action Decision Criteria,'' Memo Number 2003–112–15, dated February 25, 2003.

SWA, in a petition dated June 18, 2004, also states that the requirement is unnecessary. The airline asserts that during take-off and landing the aircraft's position is closely monitored by air traffic control, and if an over water event were to occur, the location of the aircraft would be known and broadcast long before a flight crewmember could locate and activate a pyrotechnic signaling device. SWA therefore finds the requirement obsolete. SWA also asserts that the device is hazardous. It argues that if the device is accidentally activated in the cockpit, the results could be catastrophic. SWA points out that ensuring pyrotechnic devices are safely stowed for security reasons poses an additional expense for airlines for a questionable increase in public safety. In its petition, SWA asks for an exemption or policy of nonenforcement for itself and similarly situated operators from § 91.205(b)(12) for 2 years while the FAA considers rulemaking.

Related Requirements in Part 121

In addition to petitions, over the years, other carriers have requested interpretation of § 91.205(b)(12). Part of the confusion results from other regulations in part 121 that provide a redundancy in the requirement for pyrotechnic devices in that one device must be carried for each required raft onboard aircraft that operate in extended over water operations. For aircraft other than helicopters, ''extended over water operation'' is defined in § 1.1 of 14 CFR as an operation over water at a horizontal distance of more than 50 nautical miles from the nearest shoreline. The relevant parts of the 14 CFR 121.339 requirement are as follows:

§ 121.339 Emergency equipment for extended over-water operations.

(a) Except where the Administrator, by amending the operations specifications of the certificate holder, requires the carriage of all or any specific items of the equipment listed below for any overwater operation, or upon application of the certificate holder, the Administrator allows deviation for a particular extended overwater operation, no person may operate an airplane in extended overwater operations without having on the airplane the following equipment:

(1) * * *

(2) Enough life rafts (each equipped with an approved survivor locator light) of a rated capacity and buoyancy to accommodate the occupants of the airplane. Unless excess rafts of enough capacity are provided, the buoyancy and seating capacity beyond the rated capacity of the rafts must accommodate all occupants of the airplane in the event of a loss of one raft of the largest rated capacity.

(3) At least one pyrotechnic signaling device for each life raft.

(4) and (b)–(c) * * *

Thus, the question might be asked that if an aircraft is already required to have pyrotechnic signaling devices onboard for each required life raft, should it also be required to have one additional device onboard the aircraft?

The Amended Rule

Having considered the arguments of petitioners and commenters to FAA docket number 17168, the FAA has determined that as a reasonable and judicious action, the requirement for air carriers operating under part 121 to have the pyrotechnic signaling device required by § 91.205(b)(12) onboard

should be removed from the regulations. The FAA finds that commenters have presented sufficient grounds to convince the FAA that the requirement for the pyrotechnic signaling device required by § 91.205(b)(12) for operators conducting operations under part 121 poses an unnecessary burden on those operators to secure the signaling device.

The FAA also finds that petitioners and commenters have presented compelling arguments that other regulatory requirements, such as air traffic control, dispatch/flight following, and advanced communications, provide an equivalent, if not greater, level of safety as would be provided by a pyrotechnic signaling device located on the aircraft.

Section 91.205(b)(12) will continue in force for operators not conducting their operations under part 121, since these operators' safety redundancies, such as dispatch/flight following systems, do not exist to the same extent as for part 121 air carriers. In addition, this amendment does not affect in any way the regulatory requirements for section 121.339 that require a pyrotechnic signaling device for each life raft required to be carried onboard aircraft that conduct extended over water operations. The FAA also notes that these operations do not need an additional pyrotechnic signaling device onboard the aircraft beyond the one required for each life raft.

Direct Final Rule Procedure

Under 14 CFR 11.29, the FAA may issue a direct final rule if an NPRM would be unnecessary because the agency expects no adverse comments to the changed rule. The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. The provisions in this final rule remove a requirement as it applies to air carriers conducting operations under part 121. The removal of the requirement will not affect the safety of these operations because of the redundancies built into the air traffic control and dispatch/flight following systems. As a result, the FAA has determined that this amendment is a minor relieving change that has no effect on public safety.

Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to file such a comment, the FAA will publish in the **Federal Register** a document withdrawing the direct final rule. The FAA may then issue another direct final rule accommodating the comment or may issue a notice of proposed rulemaking with a new comment period.

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

Proposed 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. 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 also 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 (Pub. L. 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).

However, for regulations with an expected minimal impact the above-specified analyses are not required. 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. Since this final rule is relieving and is expected to provide some cost savings to some part 121 operators, the FAA has determined that the rule will have minimal impact. The FAA requests comment with supporting justification regarding the FAA determination of minimal impact.

The FAA has determined this rule (1) has benefits that justify its costs, is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 and 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 economic impact on a substantial number of small entities; (3) will not reduce barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

Regulatory Flexibility Determination

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 business, 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 determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if 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 rule will not impose any cost on any small part 121 operator, but it will provide some minor cost savings to them. Therefore, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities. The FAA requests comments regarding its certification.

International 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 accordingly has assessed the potential effect of this rule to be minimal and has determined that this rule will have no impact on international trade.

Unfunded Mandates Reform Act

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 an expenditure of $100 million or more (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.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this final rule would 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 determined that this rule, therefore, would not have federalism implications.

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. We have determined that there are no requirements for information collection associated with this rule.

Environmental Analysis

FAA Order No. 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order No. 1050.1D, Appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those that may cause a significant impact on the human environment if implemented) qualify for a categorical exclusion. The FAA has determined that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its implementation.

Energy Impact

We assessed the energy impact of this rule in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. § 6362). We have determined that this rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Ethiopia, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements, Yugoslavia.

The Amendment

■ For the reasons stated in the preamble, the Federal Aviation Administration amends part 91 of Title 14 of the Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

■ 2. Amend § 91.205 by revising paragraph (b)(12) to read as follows:

§ 91.205 Powered Civil Aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements.

(b) * * *

(12) If the aircraft is operated for hire over water and beyond power-off gliding distance from shore, approved flotation gear readily available to each occupant and, unless the aircraft is operating under part 121 of this subchapter, at least one pyrotechnic signaling device. As used in this section, ''shore'' means that area of the land adjacent to the water which is above the high water mark and excludes land areas which are intermittently under water.

* * * * *

Issued in Washington, DC, on December 20, 2004.

Marion C. Blakey,

Administrator.

[FR Doc. 04–28230 Filed 12–23–04; 8:45 am]

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