

**List of Subjects in 4 CFR Part 81**

Administrative practice and procedure, Archives and records, Computer technology, Electronic products, Freedom of information, Public reading room, Requests for records.

For the reasons stated in the preamble, the Government Accountability Office amends 4 CFR part 81 as follows:

**PART 81—PUBLIC AVAILABILITY OF GOVERNMENT ACCOUNTABILITY OFFICE RECORDS**

■ 1. The authority citation for part 81 continues to read as follows:

**Authority:** 31 U.S.C. 711.

■ 2. Amend § 81.1 to revise the first sentence of paragraph (a), to revise paragraph (b), and to add paragraph (c) to read as follows:

**§ 81.1 Purpose and scope of part.**

(a) This part implements the policy of the U.S. Government Accountability Office (GAO) with respect to the public availability of GAO records, except as set forth in paragraph (b) of this section.

(b) GAO published testimonies, reports, decisions, special publications, or listings of publications are not included within the scope of this part. These documents may be obtained from the GAO Web site, <http://www.gao.gov>, or by telephone at 202-512-6000, TDD 202-512-2537, or 1-866-801-7077 (toll free). These publications may be downloaded free of charge from the GAO Web site. Paper copies requested from GAO are subject to a printing, shipping, and handling fee.

(c) Requests for all other GAO records are within the scope of this part and should be submitted to GAO as directed in paragraph (a) of § 81.4.

■ 3. Revise § 81.2 to read as follows:

**§ 81.2 Administration.**

GAO's Chief Quality Officer administers this part and may promulgate such supplemental rules or regulations as may be necessary.

■ 4. In § 81.4, remove the second sentence of paragraph (a).

■ 5. Amend § 81.6 to revise paragraph (g) and the sentence following the italic heading in paragraph (m) to read as follows:

**§ 81.6 Records which may be exempt from disclosure.**

\* \* \* \* \*

(g) Records compiled for law enforcement purposes that originate in another agency, or records provided by

GAO to another agency for law enforcement purposes.

\* \* \* \* \*

(m) \* \* \* Records obtained by the GAO Forensic Audits and Special Investigations (GAO FraudNet) are an example of records that could contain information covered by this exemption.

■ 6. Amend § 81.8 to add a new second sentence, and to revise the last sentence as follows:

**§ 81.8 Public reading facility.**

\* \* \* To determine if a record is part of the public reading facility collection and to schedule an appointment to visit the facility, contact the Library reference desk at 202-512-2585. The facility is open to the public from 8:30 a.m. to 4 p.m. except Saturdays, Sundays, and Federal holidays.

**Lynn H. Gibson,**

*General Counsel, U.S. Government Accountability Office.*

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**BILLING CODE 1610-02-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Parts 21, 25, 121, and 129**

[Docket No. FAA-2011-0186; Amendment Nos. 21-94, 25-133, 121-354, and 129-50; SFAR 111]

**RIN 2120-AJ92**

**Lavatory Oxygen Systems**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** This action temporarily authorizes variances from existing standards related to the provisioning of supplemental oxygen inside lavatories. This action is necessitated by other mandatory actions that temporarily render such oxygen systems inoperative.

**DATES:** This interim rule is effective March 8, 2011 and remains in effect until further notice. Submit comments on or before May 9, 2011.

**ADDRESSES:** Send comments identified by docket number FAA-2011-0186 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Room W12-140, West

Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202-493-2251.

*Privacy:* The FAA will post all comments it receives, without change, to <http://www.regulations.gov>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov>.

*Docket:* Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**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](mailto:jeff.gardlin@faa.gov).

For legal questions concerning this action, contact Douglas Anderson, Federal Aviation Administration, Office of the Regional Counsel, ANM-7, Northwest Mountain Region, 1601 Lind Avenue, SW., Renton, WA 98057-3356; *telephone:* (425) 227-2166; *e-mail:* [douglas.anderson@faa.gov](mailto:douglas.anderson@faa.gov).

**SUPPLEMENTARY INFORMATION:****Good Cause**

The FAA finds that notice and public comment to this interim rule are impracticable. This rule, together with Airworthiness Directive 2011-04-09, addresses an emergency situation relating to a security vulnerability in transport category airplanes. These rules both mandate action necessary to address this vulnerability and provide interim relief from other regulatory

requirements that would otherwise be violated by the mandated actions.

The FAA also finds good cause for making this interim rule effective upon publication. As discussed previously, this interim rule addresses an emergency situation, which makes it imperative that the provisions of this rule be implemented immediately.

#### 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, 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. Background

The FAA has become aware of a security vulnerability with certain types of oxygen systems installed inside the lavatories of most transport category airplanes. As a result, the FAA has mandated that these oxygen systems be rendered inoperative until the vulnerability can be eliminated. However, by rendering the oxygen systems inoperative to comply with that mandatory action, operators will be 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 current fleet of in-service airplanes, newly manufactured airplanes and airplanes undergoing other modification will need to render the oxygen systems in the lavatories inoperative. This SFAR is needed so the affected airplanes can continue operating until the issue is resolved.

#### II. Discussion of the Issue

##### *Lavatory Oxygen Systems*

Section 25.1447 specifies the quantities and accessibility requirements for supplemental oxygen

systems. The supplemental oxygen systems are necessary safety equipment in the event of loss of cabin pressure. Each occupant is required to have supplemental oxygen immediately available in the event that cabin pressure drops to a certain level. Specifically, the regulations require lavatories to be equipped with two oxygen masks and, for airplanes flying above 30,000 feet, the masks must be automatically presented to the occupants.

Two masks are required inside a lavatory to address the situation where one person may be assisting another, such as an adult with a small child. Lavatory oxygen systems are generally very similar to the systems provided for passenger and flight attendant use in the rest of the cabin. The intent of the supplemental oxygen requirements in § 25.1447 is reinforced in the operational requirements of §§ 121.329 and 121.333, although neither section specifically mentions lavatories.

##### *Safety Ramifications*

Because of security vulnerability issues, the FAA has mandated that certain lavatory oxygen systems be rendered inoperative. This mandate creates a noncompliance with airworthiness and operational standards. This SFAR addresses this noncompliance by codifying relief from the relevant airworthiness and operational requirements while the issue is being resolved.

The FAA has conducted a risk analysis to assess the safety implications of temporarily not having supplemental oxygen available inside lavatories. To support the risk assessment, earlier studies involving passengers' use of oxygen were reviewed. For a different rulemaking, the FAA tasked the Aviation Rulemaking Advisory Committee (ARAC) to make recommendations for safety standards when airplanes are operating at high altitudes. As part of its effort, the ARAC did a comprehensive assessment of the frequency and nature of the need for supplemental oxygen systems in service. The ARAC identified 2,800 instances over a 40-year period and categorized them by cause, severity, and consequence. The majority of these instances were caused by malfunctions of the cabin pressurization system. However, in none of those 2,800 instances was there a loss of life due to lack of oxygen. The ARAC used these data in making recommendations to the FAA on future rulemaking.

The FAA has reviewed the service history since the ARAC recommendations were made and found

that the types and frequencies of incidents, as well as their causes, are consistent with the historical record. The relative risks and service history have not changed in any significant way since the ARAC recommendations were issued. With respect to this SFAR, the only affected areas of the airplane are the lavatories, as opposed to the earlier assessments, which applied to the entire airplane. The lavatories are sporadically occupied during flight, and by a small number of passengers at any given time. This limits the potential impact on safety.

The ARAC found that the frequency of occurrences necessitating the use of oxygen was around  $10^{-8}$ /flight-hour for causes other than a malfunction of the pressurization system (these tend to be slower losses of pressure, or are identified at lower altitudes, and therefore are not as critical for this action). The probability that a lavatory will be occupied at any given moment is not known. It is not 100% and it is not 0%. If, for the purposes of this assessment, we assume the probability is 50%, then the probability of a person in a lavatory needing oxygen is  $\sim 5 \times 10^{-9}$ /flight-hour.

The FAA envisions a two- to four-year regulatory process to restore the affected oxygen systems to their full operational capability. The FAA has determined that during this period, the slight increase in the safety risk to a small number of individuals is outweighed by the elimination of the greater security risk that prompted the original requirement to disable the lavatory supplemental oxygen system. Nonetheless, the FAA is aggressively pursuing design solutions that will eliminate the previously identified security concerns with lavatory oxygen systems and restore oxygen to the lavatories in an expeditious manner. Further rulemaking will consider the need for changes to the type certification rules and incorporation into the fleet via changes to the operating rules. The implementation of that rulemaking will correspond with the expiration of this SFAR.

##### *The SFAR Provisions*

This SFAR allows all air carriers that are required to render lavatory oxygen systems inoperative, as it pertains to the lavatory oxygen systems only, in accordance with an FAA directive to continue to operate without complying with specific regulations pertaining to supplemental oxygen systems. This 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, this 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.

We intend to issue a new rule to address the safety concerns with lavatory oxygen systems within the duration of this SFAR. As noted above, the compliance date for that rule and the expiration of this SFAR will be aligned.

### III. Regulatory Notices and Analyses

This rulemaking action is a significant rule within the meaning of Executive Order 12866 and DOT's Regulatory Policies and Procedures, because the subject matter is of significant interest to the public. Because this interim rule addresses an emergency situation, within the meaning of Section 6(a)(3)(D) of the Executive Order, the agency has notified the Office of Management and Budget of this rule but has not followed the coordination procedures specified in the Executive Order.

#### *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 interim rule.

#### *International Compatibility*

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 determined that these regulations are not inconsistent with any ICAO Standards and Recommended Practices.

#### *Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment*

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs 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 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 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. And 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 with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this SFAR.

In conducting these analyses, the FAA has determined that this final rule: (1) Has benefits that justify its costs, (2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866, (3) is "significant" as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector.

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 detailed evaluation, this order permits that a statement to that effect, and the basis for it, be included in the preamble if a detailed regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this rule. The reasoning for this determination follows:

The FAA has become aware of a security vulnerability with certain types of oxygen systems installed inside the lavatories of most passenger-carrying part 121 transport category airplanes. As a result, in an earlier rule the FAA mandated that these lavatory oxygen systems be rendered inoperative until the vulnerability can be eliminated. However, by rendering the oxygen systems inoperative to comply with the mandatory actions, operators will be out of compliance with current FAA requirements. The affected fleet includes the current fleet of in-service and newly manufactured passenger-carrying transport category airplanes

operated under parts 121 and 129 (U.S.-registered airplanes). This SFAR requires the removal of the inoperative oxygen masks for passenger safety. Also, this SFAR is needed so the affected airplanes can continue operating until the issue is resolved.

The FAA has determined that on average, part 121 passenger-carrying turbopropeller-driven airplanes (turboprops) have one lavatory; part 121 regional jets have two lavatories; part 121 narrow-body turbojet-powered airplanes (turbojets) have three lavatories; and part 121 wide-body turbojets have 10 lavatories per airplane.

The FAA has also determined that the time necessary to remove the inoperative oxygen masks is 10 to 15 minutes per airplane lavatory and will be performed by a qualified, FAA-certificated aircraft mechanic. In addition, the FAA has determined that there would be no extra parts necessary in removing the inoperative oxygen masks. Therefore, with no extra parts necessary, there are also no additional maintenance or fuel burn costs.

The FAA is using a \$48.38 hourly rate for a mechanic working for an airplane manufacturer or modifier. We obtained the mechanic's hourly rate from the Bureau of Labor Statistics, Table 7.1. These rates include wages and benefits.

To estimate the total costs of the SFAR, the FAA had to analyze the current fleet of part 121 airplanes which are affected by the SFAR. We obtained a list of the current U.S.-operated, passenger-carrying civilian airplanes operating under 14 CFR part 121 from the FAA National Vital Information Subsystem (NVIS) database.<sup>1</sup> The FAA assumes that for newly-delivered, part 121 passenger-carrying airplanes, the inoperative oxygen masks will have already been removed. Based upon that assumption, we have matched each airplane with its average number of lavatories.

The following table shows the number of affected passenger-carrying, part 121 airplanes and the individual airplane costs for a turboprop, regional jet, and narrow- and wide-body turbojet.

<sup>1</sup> The National Vital Information Subsystem (NVIS) is a subsystem of the Flight Standards Automation System (FSAS), which is a comprehensive information system used primarily by inspectors to record and disseminate data associated with inspector activity and the aviation environment. NVIS maintains up-to-date information about the aviation community within the jurisdiction of Flight Standards.

Cost Range per Individual Part 121 Airplane				
Airplane	Number of Airplanes	Number of Lavatories	Cost Per Airplane	
			Low	High
Turboprop	411	1	\$7.23	\$10.85
Regional Jets	1,762	2	\$14.46	\$21.69
Narrow Body Turbojet	3,243	3	\$21.69	\$32.54
Wide body Turbojet	555	10	\$72.30	\$108.45

The FAA calculated the range of the total costs of the SFAR by taking the product for each of the affected passenger-carrying, part 121 airplanes; the number of lavatories on each airplane; the hourly rate of a mechanic working for an airplane manufacturer;

and the time it takes to render the oxygen systems inoperative. We then summed the costs for each of the affected part 121 airplanes to obtain a total cost for this SFAR. The SFAR's requirement to remove inoperative oxygen masks has a compliance time of

a maximum of 30 days. The FAA is publishing the SFAR in 2011; therefore, all costs will be in nominal 2011 dollars.

The following table shows these total cost results by equipment group:

Total Cost Range		
Airplane	Low	High
Turboprop	\$2,972	\$4,457
Regional Jets	\$50,957	\$76,436
Narrow Body Turbojet	\$211,022	\$316,533
Wide body Turbojet	\$401,265	\$601,898
<b>Total</b>	<b>\$666,216</b>	<b>\$999,323</b>

The FAA believes these costs are minimal. The removal of inoperative lavatory oxygen masks is to ensure passengers would not inadvertently try to use such a mask in a depressurization. We believe these safety benefits far exceed the minimal costs.

#### Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 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 FAA believes that this SFAR will not have a significant economic impact on a substantial number of small entities for the following reason.

The net effect of the SFAR is to eliminate security vulnerabilities with certain types of oxygen systems installed inside the lavatories of most passenger-carrying, part 121 transport category airplanes. The SFAR requires the removal of the inoperative oxygen masks installed inside the lavatories of passenger-carrying, part 121 transport category airplanes.

Under the RFA, the FAA must determine whether a rule significantly affects a substantial number of small entities. This determination is typically based on small entity size and cost thresholds that vary depending on the affected industry.

Using the size standards from the Small Business Administration for Air Transportation and Aircraft Manufacturing, we defined companies

as small entities if they have fewer than 1,500 employees.<sup>2</sup>

The SFAR has a compliance time of a maximum of 30 days. The FAA believes the SFAR will be published in 2011; therefore, all costs will be in nominal 2011 dollars. For this analysis, we considered the economic impact of this SFAR on small-entity part 121 operators. We obtained a list of part 121 operators from the FAA Flight Standards Service NVIS database.<sup>3</sup> Using information provided by the U.S. Department of Transportation Form 41 filings, we obtained company revenue and employment for most of the part 121 U.S. operators.

Using the methodology discussed above, we determined that of the 55 part 121 U.S. operators that could be affected by the rule, there are 38 that reported annual employment data. Of the 38 air carriers that reported annual employment data, 14 air carriers meet the SBA size standard for small business of 1,500. All of the 14 air carriers reported annual revenue.

<sup>2</sup> 13 CFR part 121, Size Standards Used To Define Small Business Concerns, Sector 48-49 Transportation, Subsector 481 Air Transportation.

<sup>3</sup> The National Vital Information Subsystem (NVIS) is a subsystem of the Flight Standards Automation System (FSAS), which is a comprehensive information system used primarily by inspectors to record and disseminate data associated with inspector activity and the aviation environment. NVIS maintains up-to-date information about the aviation community within the jurisdiction of Flight Standards.

To assess the SFAR's cost impact to small-entity part 121 operators, the FAA has determined that the time necessary to render lavatory oxygen systems inoperative is 10 to 15 minutes per airplane lavatory and will be performed by a qualified, FAA-certificated aircraft mechanic. For this analysis, we will conservatively use the high time of 15 minutes.

The FAA is using a \$48.38 hourly rate for a mechanic working for an airplane

manufacturer or modifier. We obtained the mechanic's hourly rate from the Bureau of Labor Statistics, Table 7.1. These rates include wages and benefits.

The FAA calculated the total costs of the SFAR by taking the product for each of the affected passenger-carrying, part 121 airplanes; the number of lavatories on each airplane; the hourly rate of a mechanic working for an airplane manufacturer or modifier; and the time it takes to render the oxygen systems

inoperative. We then summed the costs for each of the affected part 121 airplanes to obtain a total cost for this SFAR. We then measured the economic impact on small entities by dividing the estimated compliance cost by each of the 14 small entities' annual revenue.

The SFAR's cost is estimated to be less than one percent of annual revenues for all 14 small-entity operators. The following table shows these results.

Operator	Employees	Revenue	SFAR Costs	Annual Revenue
1	396	\$192,338,480	\$390	0.0002%
2	409	\$113,237,577	\$976	0.0009%
3	540	\$239,239,631	\$6,897	0.0029%
4	560	\$141,892,908	\$1,085	0.0008%
5	761	\$117,246,489	\$1,562	0.0013%
6	761	\$255,275,336	\$5,813	0.0023%
7	1,024	\$203,168,058	\$2,126	0.0010%
8	1,024	\$615,856,528	\$3,861	0.0006%
9	1,032	\$405,368,222	\$14,294	0.0035%
10	1,043	\$903,991,552	\$2,169	0.0002%
11	1,268	\$312,243,756	\$1,735	0.0006%
12	1,308	\$172,009,935	\$607	0.0004%
13	1,421	\$533,349,084	\$3,514	0.0007%
14	1,446	\$622,195,000	\$6,507	0.0010%

Since the cost of the SFAR is less than one percent for each of the 14 small-entity operators, I certify that this SFAR will not have a significant economic impact on a substantial number of small entities.

#### *International Trade Impact Assessment*

The Trade Agreements Act of 1979 (Pub. L. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. 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 rule and determined that as the objective of this rule is aviation safety and it does not exclude imports,

the rule does not create unnecessary obstacles to foreign commerce.

#### *Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

#### *Executive Order 13132, Federalism*

The FAA has analyzed this interim 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.

#### *Regulations Affecting Intrastate Aviation in Alaska*

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. We have determined that there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska.

#### *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 4j and involves no extraordinary circumstances.

#### *Regulations That Significantly Affect Energy Supply, Distribution, or Use*

The FAA analyzed this interim 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.

#### *How To Obtain Additional Information* 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/](http://www.faa.gov/regulations_policies/) or
3. Access the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

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.

#### *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/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

#### List of Subjects

##### *14 CFR Part 21*

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

##### *14 CFR Part 25*

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

##### *14 CFR Part 121*

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

##### *14 CFR Part 129*

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping

requirements, Security measures, Smoking.

#### The Amendments

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

#### **PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS**

- 1. The authority for part 21 continues to read as follows:

**Authority:** 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701-44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303.

- 2. Amend part 21 by adding subpart P, consisting of § 21.700, to read as follows:

#### **Subpart P—Special Federal Aviation Regulations**

##### **§ 21.700 SFAR No. 111—Lavatory Oxygen Systems.**

The requirements of § 121.1500 of this chapter also apply to this part.

#### **PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES**

- 3. The authority for part 25 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

- 4. Amend part 25 by adding subpart I, consisting of § 25.1801, to read as follows:

#### **Subpart I—Special Federal Aviation Regulations**

##### **§ 25.1801 SFAR No. 111—Lavatory Oxygen Systems.**

The requirements of § 121.1500 of this chapter also apply to this part.

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

- 5. 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.

- 6. Add subpart DD, consisting of § 121.1500, to read as follows:

#### **Subpart DD—Special Federal Aviation Regulations**

##### **§ 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 equipped with any chemical oxygen generator installed in any lavatory that are engaged in passenger-carrying operations and that:

- (i) Operate under 14 CFR part 121; or
- (ii) Operate U.S.-registered airplanes with a maximum passenger capacity of 20 or greater under 14 CFR part 129.

(2) Applicants for airworthiness certificates.

(3) Holders of production certificates.

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

(b) *Regulatory Relief.* 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 the effective date of this SFAR, all oxygen masks must be removed from affected lavatories, and the mask stowage location must be reclosed.

(iii) Within 60 days of the effective date of this SFAR 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 will remain in effect until further action.

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

■ 7. The authority citation for part 129 continues to read as follows:

**Authority:** 49 U.S.C. 1372, 40113, 40119, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901-44904, 44906, 44912, 46105, Pub. L. 107-71 sec. 104.

■ 8. Amend part 129 by adding subpart C, consisting of § 129.201, to read as follows:

**Subpart C—Special Federal Aviation Regulations**

**§ 129.201 SFAR No. 111—Lavatory Oxygen Systems.**

The requirements of § 121.1500 of this chapter also apply to this part.

Issued in Washington, DC, on March 4, 2011.

J. Randolph Babbitt,  
Administrator.

[FR Doc. 2011-5325 Filed 3-7-11; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2011-0157; Directorate Identifier 2010-NM-261-AD; Amendment 39-16630; AD 2011-04-09]

RIN 2120-AA64

**Airworthiness Directives; Various Transport Category Airplanes Equipped With Chemical Oxygen Generators Installed in a Lavatory**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule; request for comments.

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2011-04-09 that was sent previously by individual notices to the known U.S. owners and operators of affected airplanes identified above. This AD requires modifying the chemical oxygen

generators in the lavatory. This AD was prompted by reports that the current design of these oxygen generators presents a hazard that could jeopardize flight safety. We are issuing this AD to eliminate this hazard.

**DATES:** This AD becomes effective March 14, 2011 to all persons except those persons to whom it was made immediately effective by AD 2011-04-09, which contained the requirements of this amendment.

We must receive comments on this AD by April 22, 2011.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Jeff Gardlin, Aerospace Engineer, Cabin Safety Branch, ANM-115, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone 425-227-2136; fax 425-227-1149; e-mail [jeff.gardlin@faa.gov](mailto:jeff.gardlin@faa.gov); or

Robert Hettman, Aerospace Engineer, Propulsion and Mechanical Systems Branch, ANM-112, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2683; fax (425) 227-1149; e-mail [robert.hettman@faa.gov](mailto:robert.hettman@faa.gov).

**SUPPLEMENTARY INFORMATION:** On February 10, 2011, we issued AD 2011-04-09, which applies to certain passenger-carrying transport category airplanes operating in 14 CFR part 121

air carrier service; or U.S.-registered and operating under 14 CFR part 129, with a maximum passenger capacity of 20 or greater; and equipped with any chemical oxygen generator installed in any lavatory.

**Background**

This AD was prompted by reports that the current design of these oxygen generators presents a hazard that could jeopardize flight safety. We are issuing this AD to eliminate this hazard.

**FAA's Determination and Requirements of This AD**

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, we issued AD 2011-04-09 to eliminate a hazard with chemical oxygen generators in the lavatory, which, if not corrected, could jeopardize flight safety. The AD requires either activating all chemical oxygen generators in the lavatories until the generator oxygen supply is expended, or removing the oxygen generator(s); and, for each chemical oxygen generator, after the generator is expended (or removed), removing or restowing the oxygen masks and closing the mask dispenser door.

We have determined that notice and opportunity for prior public comment on AD 2011-04-09 were contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on February 10, 2011, to the known U.S. owners and operators of certain passenger-carrying transport category airplanes operating in 14 CFR part 121 air carrier service; or U.S.-registered and operating under 14 CFR part 129, with a maximum passenger capacity of 20 or greater; and equipped with any chemical oxygen generator installed in any lavatory.

These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

**Differences Between This Federal Register Version and the Individual Notices**

This **Federal Register** version of the AD is different from the individual notices previously issued. These individual notices contained a time-limited flight crew notification procedure. This procedure required that the pilot in command be notified that the oxygen generators in the lavatories had been rendered inoperative, and instructed the pilot in command to brief the crew that in the event of a rapid