

## The Rule

The FAA is amending the time of designation for R-6320 from "Continuous" to "Intermittent by NOTAM." This rule makes no other changes to R-6320. This action reduces the burden on the public by reducing the time of designation. Therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

Section 73.63 of Title 14 CFR part 73 was republished in FAA Order 7400.8M, dated January 6, 2006.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with 311c., FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures". This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

### List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

### Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

### PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 73.63 [Amended]

■ 2. § 73.63 is amended as follows:

\* \* \* \* \*

### R-6320 Matagorda, TX [Amended]

Under Time of designation, by removing the word "Continuous" and inserting the words "Intermittent by NOTAM."

\* \* \* \* \*

Issued in Washington, DC on January 5, 2007.

**Edith V. Parish,**

*Manager, Airspace and Rules.*

[FR Doc. E7-392 Filed 1-11-07; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 121

[Docket No. FAA-2006-24277; Amendment No. 121-330]

**RIN 2120-AI75**

### Fire Penetration Resistance of Thermal/Acoustic Insulation Installed on Transport Category Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA extends, by 24 months, the date for operators to comply with the fire penetration resistance requirements of thermal/acoustic insulation used in transport category airplanes manufactured after September 2, 2007. This extension is from September 2, 2007, to September 2, 2009. This action is necessary to allow airframe manufacturers enough time, after getting an acceptable certification test facility, to select and certificate appropriate installations.

**DATES:** This amendment becomes effective February 12, 2007.

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

#### SUPPLEMENTARY INFORMATION:

#### Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket

Management System (DMS) Web page (<http://dms.dot.gov/search/>);

(2) Visiting the FAA's Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies/](http://www.faa.gov/regulations_policies/); or

(3) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending 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.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

### 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. If you are a small entity and you have a question regarding this document, you may contact its 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/regulations\\_policies/rulemaking/sbre\\_act/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

### Authority for This Rulemaking

The FAA's authority to issue rules regarding 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. 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. This regulation is within the scope of that authority, because it prescribes new safety standards for the design of transport category airplanes.

## Background

We issued a notice of proposed rulemaking (NPRM) on April 3, 2006 (71 FR 16678) to extend the compliance date of 49 CFR 121.312(e)(3) because of unforeseen difficulties in establishing acceptable test equipment for showing compliance with that regulation. As discussed in the NPRM, that section requires that transport category airplanes manufactured after September 2, 2007, comply with the provisions of 14 CFR 25.856(b) when entering part 121 service. Section 25.856(b), in turn, requires that thermal/acoustic insulation installed in the lower half of the fuselage of those airplanes resist penetration of an external fire. The performance criteria are contained in Appendix F, part VII of part 25.

Based on difficulties in obtaining and qualifying the necessary test equipment that arose following publication of the requirement, we determined that the compliance date for § 121.312(e)(3) should be extended. This is discussed in detail in the NPRM.

## Discussion of Comments

Nine commenters responded to the NPRM. Two commenters, Daher-Lhotellier and Cogebi, are affiliated insulation material manufacturers that do not support extending the compliance date. These commenters contended that materials meeting the rule are available and that compliance within the existing date is possible. They provided no further information. The basis of the proposed extension was that manufacturers were not able to show that materials that are optimized for cost and weight would reliably meet the requirement. We agree there are materials that satisfy the test requirements of the regulation, but these are heavier or more expensive than envisioned by the rule. The commenters did not address this point in their comments. We therefore do not agree the current compliance date should be maintained.

All other commenters (Airbus, Airline Pilots Association (ALPA), Air Transport Association (ATA), Association of European Airlines (AEA), Aerospace Industries Association (AIA), Boeing, and Bombardier) supported an extension to the compliance date.

ALPA agreed that an extension of the compliance date is warranted, but had other comments on the basic requirement. These comments included expanding the number of airplanes affected, and the portion of the airplane that must be protected with insulation meeting the requirement. ALPA had made these same comments during the

original rulemaking. These comments went beyond the scope of the NPRM, which simply addresses the compliance date for newly manufactured airplanes. However, as discussed in the original rulemaking, we have determined that broadening the applicability of the rule would have a very small benefit, and significant cost.

Airbus, Boeing, Bombardier, AIA and AEA all contended the test equipment is still not sufficiently developed to support a fixed compliance date. They maintained the scatter in test results is too wide for a certification standard.

We do not agree. The FAA William J. Hughes Technical Center has worked aggressively to resolve the issues with the test equipment, and has made significant progress in eliminating differences between test facilities. The most significant issue was the difference in performance between two test burners with slightly different configurations. We have developed small modifications that bring the two configurations into alignment. These modifications have been distributed to the test facilities that required them. In addition, we have conducted a series of tests with different materials to confirm the modifications do, in fact, work. It should be noted that all test methods, and in particular, fire test methods, have variability. This test method is consistent with other fire test methods in terms of the variation in results from one test to the next. As discussed below, some of the variation in test results is not because of the test method or equipment.

We have also identified variability in materials that can lead to variability in test results. In the tests cited by these commenters, many of the materials tested were "off the shelf" and not necessarily developed to comply with an aviation safety standard. More recent efforts to develop materials whose properties were carefully controlled have shown the test results can be very consistent, if the material being tested is itself very consistent.

Airbus, Boeing, and AIA commented the burner used in the test method is obsolete, and no longer available. They stated this contributes to difficulties in obtaining consistency among facilities and within a facility.

While the burner is no longer commercially available; there are numerous burners already in industry. As discussed above, the FAA Technical Center has developed refinements to the burner that standardize its performance. However, as the supply of burners is limited, we have also developed an alternative burner that eliminates many of the parameters that are currently the

source of performance variations. This design will be documented and the plans made available to anyone requesting them. The new burner can be fabricated from standard parts and should eliminate concerns that the old burner is out of production.

Airbus commented there are no commercially available test facilities. At the time the comment was made, no commercial facilities had requested FAA acceptance. However, since the NPRM was published, two facilities have requested and received FAA review and would be eligible to conduct certification testing if they so choose.

Airbus also commented the late availability of the associated advisory circular (AC) 25.856-2 has contributed to the need for further extension. Airbus noted the final AC was published in January 2006, and not concurrently with the final rule. They stated the lack of published guidance affected their ability to begin designing suitable solutions.

Part of the reason the AC publication was delayed was to permit as much consideration as possible of the equipment issues that had arisen. We had to balance the need to issue the AC as soon as possible with the need to make it as comprehensive as possible. The absence of the AC did not, however, limit any manufacturer's ability to propose, and gain acceptance for, methods of compliance. The FAA has worked with each affected manufacturer to develop methods of compliance. While the ideal situation would have been to have the AC available concurrent with the final rule, this should not have inhibited the development of methods of compliance.

Bombardier, Boeing and Airbus, with supporting comments from AEA and AIA, contended there are no, or limited, materials available that satisfy the cost/weight criteria specified in the original rulemaking. We believe that part of this comment stemmed from the prior problems with test equipment, and the potential for certain materials to pass at one facility, but fail at another. Since the material used to establish cost and weight in the original rulemaking is still available, we do not agree there are no materials available. However, we agree the scatter in test results that prompted this rule introduced uncertainty, and reluctance on the part of the manufacturers to commit to a material.

Bombardier commented on specific areas of the airplane that may be more complex to address than others, as well as some alternative approaches to providing protection from flame penetration. These comments were not directly related to the subject of the compliance date. Nonetheless, we agree

that some areas of the airplane are more complicated than others, but this was accounted for in the rulemaking. In terms of alternative approaches, an applicant is free to propose an approach that provides an equivalent level of safety.

Boeing expressed a concern that the local Aircraft Certification Offices will not have enough information with which to review, and find acceptable, test facilities. As noted above, two facilities have been reviewed and accepted to date. The FAA plans to make such reviews a priority and there have been no unforeseen difficulties in successfully accomplishing the facility review.

Boeing and Airbus both indicated that they cannot comply, even with a 12 month extension. They stated their current production schedules and design requirements mean that compliance with the existing proposal will cause severe disruption of their schedules and cause them to implement materials that are heavier, or more costly than can be developed soon. This in turn would require them to change configurations twice: once to meet the compliance date, and again to optimize the materials, after they complete their development. They proposed an additional 12 month extension, for a total of 24 months to minimize disruption of their production.

We have carefully considered these comments, as they are fundamental to the impact of the rule. When the original rule was promulgated, we determined that a four year compliance time was sufficient for newly manufactured airplanes. This assessment presumed that materials and test equipment were readily available and that manufacturers would begin to address compliance immediately. However, we have acknowledged the test equipment was not readily available in a condition to always provide reliable test results, and that this brought into question the suitability of certain materials presumed to be acceptable. Since this rule does add weight and cost to the airplane, the balance between the total cost impact and the safety benefit is very important. If the cost of implementing the rule is much more significant than anticipated, the justification for the rule may be revisited. Since we believe the rule provides a significant safety benefit, we must maintain the balance between the cost impact, and the safety benefit provided. Clearly, for various reasons, two major airplane manufacturers are not prepared to comply with the rule, even allowing for a 12 month extension from the original compliance date.

While we do not agree that all the reasons for this lie with the issues associated with the test method, we believe that the current proposal will result in significantly greater economic impact than was anticipated.

We have worked closely with each of the affected airplane manufacturers to address compliance questions and certification methodology. This has involved on-site visits and inspection of airplane design details, in addition to numerous discussions. These reviews give us a good appreciation of the magnitude of the design changes required to achieve compliance, which are substantial. Since a significant amount of the compliance time was absorbed with test equipment issues, the airplane manufacturers are significantly behind in implementing designs. Even though we had concluded that a 12 month extension would be sufficient, the two largest airplane manufacturers are clearly not postured to accommodate compliance in that timeframe using materials that they consider optimal and that they intend to use for future compliance. We agree that they could not comply within the current proposed timeframe without a substantial cost impact that we did not originally anticipate.

Considering all of the above we have concluded that an additional 12 month extension, for a total of 24 months, is appropriate to implement this requirement in keeping with the original cost/benefit balance of the rule. In making this decision, we have considered that we would very likely receive petitions for exemption to address specific certification programs if the current proposal is maintained. The potential for further extensions is a significant factor in changing the proposal. Barring some unforeseen event, we do not envision any more changes to the compliance date. The final rule is changed accordingly.

Notwithstanding the 24 month extension, we would expect the manufacturers to implement the required design changes as early as possible, to improve the safety of the fleet.

#### **Paperwork Reduction Act**

There are no current or 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 has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

#### **Regulatory Evaluation, Regulatory Flexibility Analysis, International Trade Impact Assessment, and Unfunded Mandate 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. 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 final rule.

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

A two-year postponement of the new thermal acoustic insulation standards would spare manufacturers an added setup cost of slightly less than \$60 million at an expected societal loss of \$4 million in benefits. The Improved Flammability Standards for Thermal/Acoustic Insulation final regulatory evaluation (July, 2002) estimated the new insulation requirements would produce present value benefits of \$222.6 million with present value costs of

\$108.4 million (Table M). The two-year benefit/cost delay dichotomy is because of large set up costs and a relatively short postponement of corresponding benefits. The benefits increase slowly with a gradual increase in the fleet because of annual deliveries of new production airplanes with the new thermal/acoustic insulation.

As shown in the 2002 final regulatory evaluation nearly half of the regulatory evaluation estimated \$108 million present value costs are the setup costs (\$58.1 million in present value), which are incurred in the two years before installing the improved insulation on new production airplanes. These setup costs occur because of configuration management, or the cost resulting from engineering time to change airplane configuration—such as fully accounting for all parts, tools, and shop manual changes. To be in compliance with the new requirements the industry would first have to install a heavier insulation, before lighter weight insulation becomes fully available. Two different types of insulation materials require configuration management costs to double.

Thus this final rule results in large cost savings with a minor loss in social benefits. The FAA has, therefore, determined that this final rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, and is not “significant” as defined in DOT’s Regulatory Policies and Procedures.

#### **Regulatory Flexibility Analysis**

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.

With this rule airplane manufacturers will avoid incurring an added configuration management cost. While these manufacturers are not small entities, the small entity operators are expected to save fuel burn expense, as the one-year interim fix insulation is heavier. Thus this rule is cost relieving and does not impose a significant economic impact on a substantial number of small entities.

We did not receive comments following the NPRM about the cost impact on small entities.

Therefore, as the FAA Administrator, I certify that this rule 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) prohibits Federal agencies from establishing any standards or engaging in 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 provides the same cost relief to domestic and international entities and thus has a neutral trade impact.

#### **Unfunded Mandate 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 (adjusted annually for inflation with the base year 1995) 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 \$128.1 million in lieu of \$100 million. This final rule does not contain such a mandate.

#### **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, 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. In the NPRM, we requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. We didn’t receive any comments, and we have determined, based on the administrative record of this rulemaking, 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 3f and involves no extraordinary circumstances.

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

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 18, 2001). We have determined that it is not a “significant energy action” under the executive order because it is not a “significant regulatory action” under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### **List of Subjects in 14 CFR Part 121**

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

## The Amendment

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

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

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

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

■ 2. Amend § 121.312 by revising paragraph (e)(3) to read as follows:

#### § 121.312 Materials for compartment interiors.

\* \* \* \* \*

(e) \* \* \*

(3) For airplanes with a passenger capacity of 20 or greater, manufactured after September 2, 2009, thermal/acoustic insulation materials installed in the lower half of the fuselage must meet the flame penetration resistance requirements of § 25.856 of this chapter, effective September 2, 2003.

Issued in Washington, DC, on January 4, 2007.

Marion C. Blakey,  
Administrator.

[FR Doc. E7–338 Filed 1–11–07; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Parts 125 and 135

[Docket No. FAA–2004–18596; Amendment No. SFAR 106]

RIN 2120–AI30

#### Use of Certain Portable Oxygen Concentrator Devices Onboard Aircraft

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Federal Aviation Administration (FAA) is making minor technical changes to a final rule published in the *Federal Register* on July 12, 2005 (70 FR 40156). That final rule created Special Federal Aviation Regulation 106 (SFAR 106). In that final rule the FAA inadvertently failed to make conforming amendments to additionally apply the SFAR to parts 125 and 135 as proposed, and to include references in those parts to the existence of SFAR 106 published in part 121.

**EFFECTIVE DATES:** Effective on February 12, 2007.

**FOR FURTHER INFORMATION CONTACT:** David L. Catey, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–3732.

**SUPPLEMENTARY INFORMATION:** The Federal Aviation Administration (FAA) published SFAR 106, “Use of Certain Portable Oxygen Concentrator Devices onboard Aircraft,” in the *Federal Register* on July 12, 2005 (70 FR 40156). We inadvertently failed to attach notes to parts 125 and 135 of Title 14 of the Code of Federal Regulations (14 CFR) that would direct operators subject to those regulations to the body of SFAR 106. When the FAA published the notice of proposed rulemaking (NPRM) that offered the proposed SFAR to the public for comment, we clearly stated that the proposed regulation would apply to civil aircraft in parts 121, 125, and 135. The NPRM was published in the *Federal Register* on July 14, 2004 (69 FR 42324), and in the heading we noted that the proposal applied to 14 CFR Parts 121, 125, and 135. The applicability for an SFAR to a specific part of 14 CFR is not specifically cited in the Applicability section of the regulatory language, but rather cited in the heading of the SFAR and the parts affected contain an editorial note referring readers to the text of the SFAR. When the final rule was published, we failed to include those notes to parts 125 and 135. This technical amendment will add the editorial notes to parts 125 and 135 that direct the reader to the text of SFAR 106 and ensure that readers know the regulation applies to operations conducted under those parts. This amendment will not impose any additional restrictions on operators affected by these regulations.

SFAR 106 permits passengers to carry on and use certain portable oxygen concentrator devices (POCs) onboard aircraft if the aircraft operator ensures that the conditions specified in the SFAR for their use are met. Aircraft operators can now offer medical oxygen service as they did before SFAR 106 was enacted, or they can arrange for passengers to carry on and use one of the devices covered in SFAR 106. SFAR 106 is an enabling rule, which means that no aircraft operator is required to allow passengers to operate these devices onboard, but they may allow them to be operated onboard. If one of these devices is allowed by the aircraft operator to be carried on board, the conditions in the SFAR must be met. SFAR 106 allows for the use of five

specific POC devices the FAA has found to be acceptable.

#### Need for the Correction

As stated above, this correction is needed to make clear that the conditions and regulations of SFAR 106 are also applicable to operations conducted under parts 125 and 135, as proposed in the NPRM and intended in the final rule.

#### Technical Amendment

The technical amendment will correct the omission of the editorial notes that direct operators under parts 125 and 135 to SFAR 106 in part 121.

#### List of Subjects

##### 14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements

##### 14 CFR Part 135

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

■ Accordingly, Title 14 of the Code of Federal Regulations (CFR) parts 125 and 135 are amended as follows:

#### 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.

■ 1. The authority citation for part 125 continues to read as follows:

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

■ 2. Special Federal Aviation Regulation No. 106 is added to part 125 to read as follows:

SPECIAL FEDERAL AVIATION  
REGULATION NO. 106

*Editorial Note:* For the text of SFAR No. 106, see part 121 of this chapter.

#### PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 3. The authority citation for part 135 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.