
Tuesday
October 27, 1992

federal register

Part II

**Department of
Transportation**

Federal Aviation Administration

**14 CFR Parts 121 and 135
Exit Seating; Final Rule**

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 25821; Amendment Nos. 121-232 and 135-45]

RIN 2129-AE22

Exit Seating

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule and request for comments.

SUMMARY: The FAA is amending the exit row seating rule to: (1) Replace the term "exit row seat" with the term "exit seat," to clarify that the rule only affects seats that provide direct access to an exit and seats in rows through which passengers must pass to use an exit; (2) prohibit a passenger from sitting in an exit seat if the passenger cannot read, speak, or understand the primary language in which emergency oral commands are given by the crew; (3) require that passenger information cards notify passengers of this prohibition in all of the languages used on the card for more general evacuation information; (4) remove the requirement that exit seat information on passenger information cards be in each language used on the card for more general evacuation information; and (5) prohibit taxi or pushback until a crewmember has verified that no exit is occupied by a person the crewmember determines is unable to perform those functions required in the event of an emergency in which a crewmember is not available to assist. These actions are necessary to relieve burdens on both passengers and operators caused by the restriction of more seats than is necessary in the interest of safety, to ensure that passengers who cannot respond to emergency commands are not seated in exit rows, and to remove unnecessarily burdensome and possibly misleading language requirements for passenger information cards.

DATES: Effective October 27, 1992. Comment by December 28, 1992.

ADDRESSES: Comments on this amendment may be mailed in duplicate to the Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25821, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Donell Pollard Regulations Branch,

AFS-240, Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8096.

SUPPLEMENTARY INFORMATION:

Comments Invited

The Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, DOT operating administrations should provide an opportunity for public comment, after issuance, for regulations issued without prior notice. Accordingly, interested persons are invited to comment on this final amendment by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and should be submitted in duplicate to the address above. All comments will be available in the Rules Docket for examination by interested parties. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25821." The postcard will be date stamped and mailed to the commenter.

Background

On March 2, 1990, the FAA adopted Amendment Nos. 121-214 and 135-36, which revised §§ 121.585 and 135.129 of the Federal Aviation Regulations to increase the chances of occupant survival following a crash. These sections provide that certificate holders operating aircraft affected by those sections (except on-demand air taxis with nine or fewer passenger seats) may not seat a passenger in an exit row seat who is not able and willing, without assistance, to activate an emergency exit and to take certain additional actions needed to ensure safe use of the exit in an emergency in which a crewmember is not available to perform those functions.

Based on further review, the FAA has determined that the term "most direct access" used in the definition of an exit row has led to confusion and to the designation of many more seats than were intended to be covered by the rule. Several certificate holders have brought to the attention of the FAA that literal application of the rule results in designating seats that need not be affected by the rule in the interest of safety, which, consequently, also reduces the seats available to

handicapped persons. Rows have been designated as exit rows when some seats in those rows could not really be considered to have "direct access" because passengers in those seats would have to enter an aisle or pass around an obstruction to get from the seats to the exit. The rule was actually intended to cover only seats in rows through which passengers have to pass to use an exit and individual seats, in other rows, that have direct access to an exit. The rule is amended to clarify this intent.

For example, under the current rule, an unnecessary seating restriction can occur when a portion of a row adjacent to a floor level exit is behind a partition. Because the end seat in the row has direct access to the exit, the entire row must be designated as exit row seats. In some configurations involving a row of two seats adjacent to a floor level exit, one seat is behind a partition. The occupant of that seat does not have direct access to the exit and is no more likely to be the first passenger at the exit in the event of an emergency, even if the adjacent seat is unoccupied, than is a passenger in a nearby aisle seat that does not have direct access to the exit. Further, a passenger in the seat behind the partition is no more likely to impede access to the exit, by reason of a handicapping condition, than if he or she were occupying a nearby aisle seat to which the rule does not apply. Thus, it is not necessary, in the interest of safety, to restrict seating in the seat behind the partition in such a situation (for example, seat A is figure 1). The rule is amended accordingly to replace the definition of an exit row with a definition of an exit seat, and to make the rule applicable only to those seats that meet the definition. This amendment thus relieves an unnecessary restriction by clarifying the rule without detracting from that intent.

The definition of an exit row also fails to describe adequately the seats that must be designated to meet the intent of the rule for some aircraft passenger seating configurations. For instance, some aircraft have an open space approximately the width of a passenger seat between an exit and the first seat in a row having direct access to the exit. Because, by its terms, the rule adopted by Amendment Nos. 121-214 and 135-36 applied to all seats in the row from the fuselage to the first aisle inboard, it was not clear whether the rule applied to the row having the open space or to the nearest row having a seat against the fuselage. The applicability of the rule is clarified by revising the rule so that it applies to all the seats in the row

through which passengers must pass to use the exit, whether or not the first seat inboard of the exit is at the fuselage. (See figure 2.) In this configuration, the seats in the row behind the row with the inboard seat removed also would be exit row seats because they have direct access to the exit.

BILLING CODE 3010-72-01

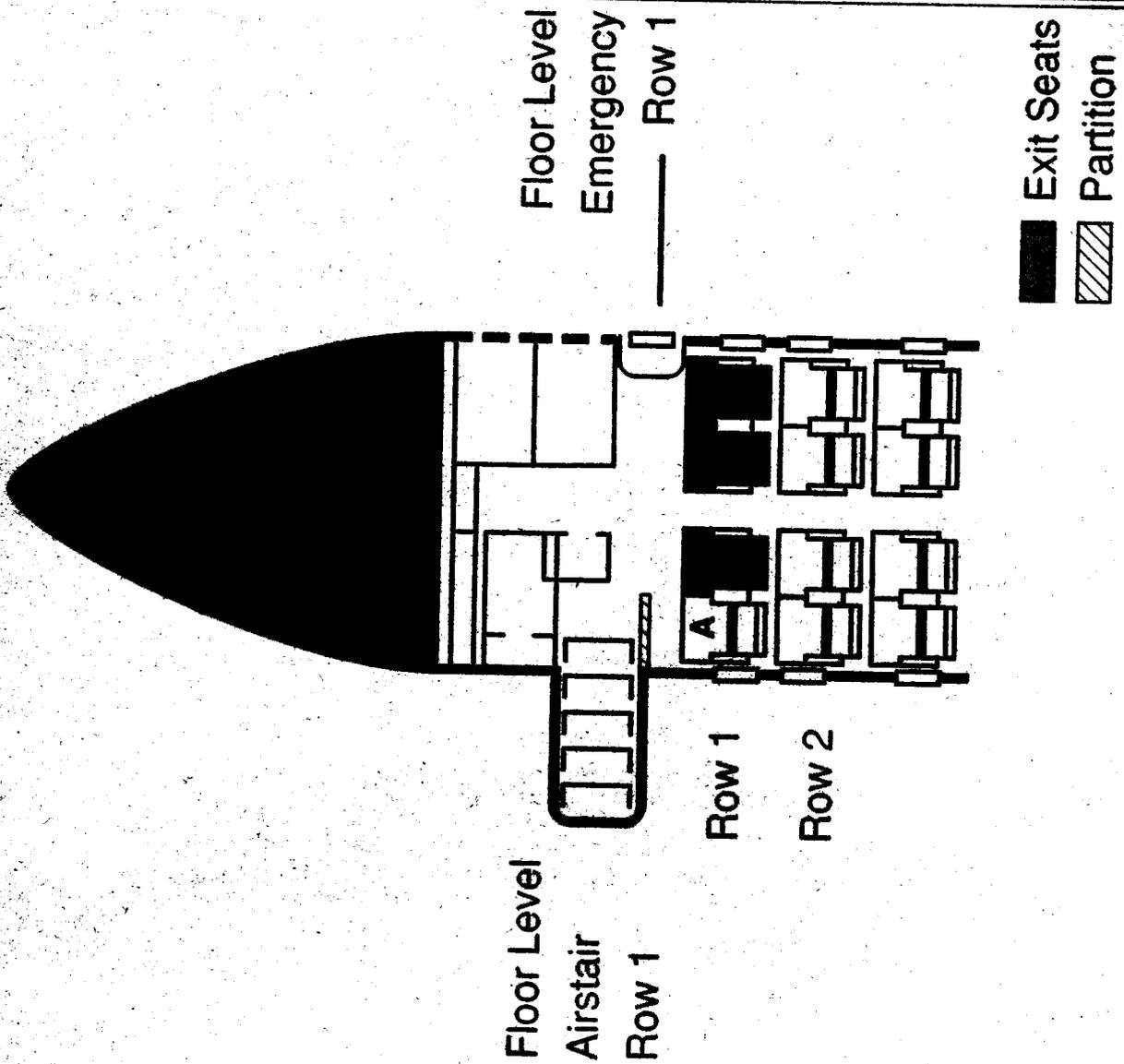
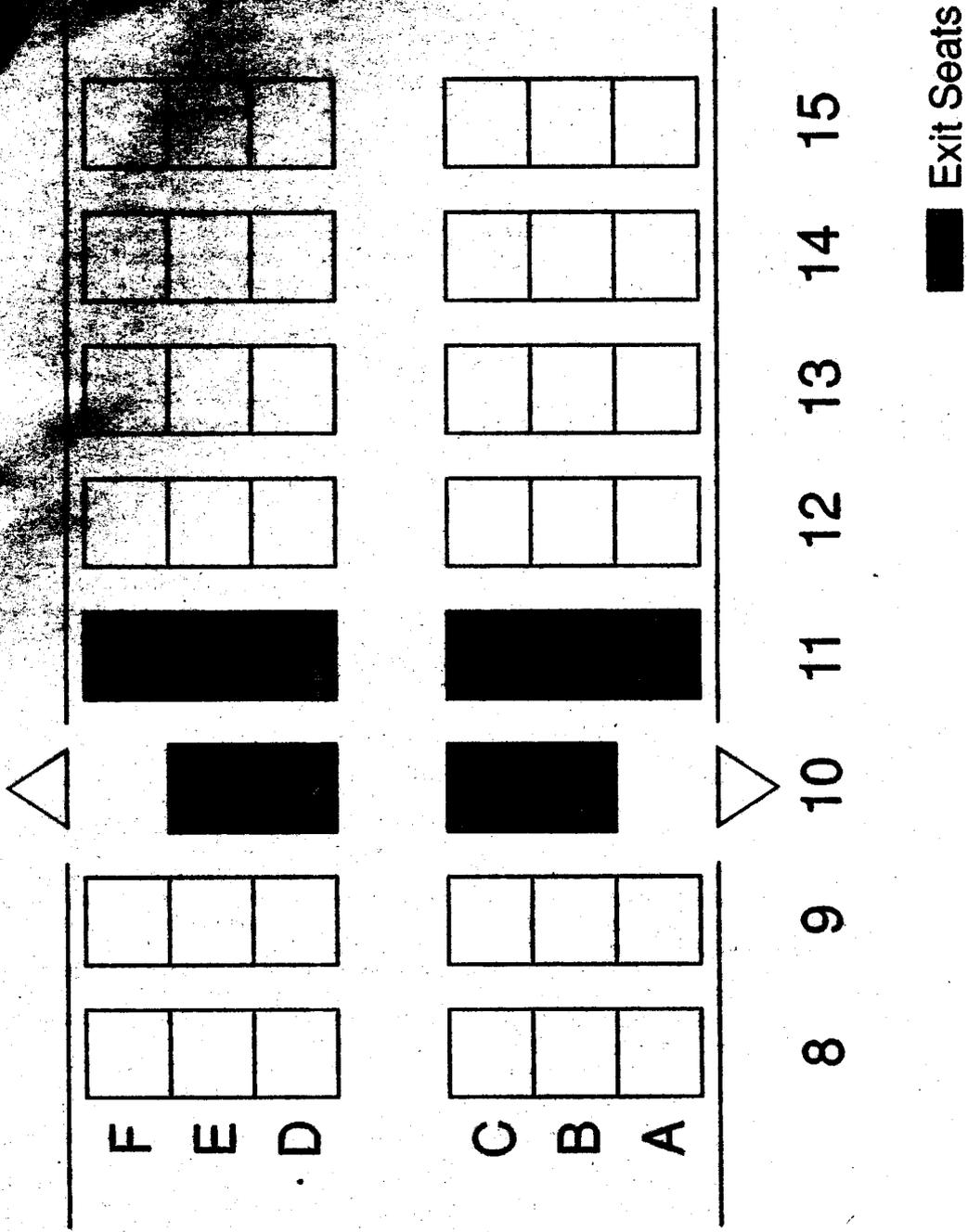


Figure 1



BILLING CODE #810-19-C

Figure 2

In addition, the rule is being amended to clarify that a certificate holder is required to designate the seats to which the rules apply in each passenger seating configuration in its fleet. Such designation is considered an integral part of the procedures required by the regulation.

The current requirement in the rule that persons seated in exit rows must be able to understand commands given in English may not be appropriate when certificate holders have operations conducted entirely within a foreign country. When this is the case, English may not be the primary language of the crew. Therefore, to meet the safety objectives of §§ 121.585 and 135.139, the rule should require that passengers seated in exit seats be able to understand the primary language the crew will use in an emergency to give oral commands. To effect this change in the rules, the words "in the English language" have been deleted from paragraph (b)(3) of §§ 121.385 and 135.129.

Furthermore, as adopted, the rule allows passenger information cards to be handwritten. The FAA has determined that virtually no certificate holders have handwritten passenger information cards. Moreover, handwritten material cannot be relied upon to be legible enough to convey the necessary safety information. Therefore, the amendments also delete the word "handwritten" from paragraph (b)(3).

In accordance with the rule, passenger information cards contain a list of the selection criteria for persons who sit in exit seats, instructions for the functions they may have to perform, and reseating criteria. Under the current rules, this information must be in all the languages in which other information on the card is presented. The FAA has determined that requirement is unnecessarily burdensome for the carrier and may result in a safety hazard that was overlooked when the rule was issued. The hazard is that listing this information in multiple languages may induce a person to remain in an exit seat when, although that person can perform the functions as described in his or her language, he or she would not be able to understand emergency oral commands issued by a crewmember.

The FAA has determined that the appropriate remedy for this problem is to (1) require a message on the information cards, in all the languages used on the card, that requests passengers in exit rows to identify themselves if they cannot read, speak, and understand the specified language (indicated by the card) to be used by the crew in emergencies; and (2) have the

remaining information required by the rule in only the language used for emergency oral commands. This action will avoid the problem of having a passenger in an exit seat even though he or she would not understand the crew in an emergency. It also will relieve certificate holders of the expense and burden of printing that information in multiple languages.

Finally, the FAA has modified the requirement that no certificate holder may allow all passenger entry doors to be closed in preparation for a taxi or pushback unless a crewmember has verified that no unqualified person occupies an exit seat. This action does not preclude passenger verification prior to door closure; however, it allows the carrier flexibility to close the entry door in response to environmental concerns, such as noise and weather conditions, before making the exit seat verification.

The amendments adopted herein revise §§ 121.585 and 135.129 accordingly.

Reasons for No Notice and Immediate Adoption

These amendments are being adopted without notice and comment because it would be contrary to the public interest to follow notice and comment procedures with regard to: (1) Clarifying the definition because the existing definition is susceptible to confusing interpretations that restrict the number of seats available to handicapped persons with no benefit to safety; (2) requiring exit seat passengers to read, speak, and understand the primary language used by the crew to give emergency oral commands because the present requirement that exit seat passengers read, speak, and understand English could result in miscommunication in an emergency; (3) and (4), respectively, revising passenger information cards to notify in all languages the exit seat passengers of the requirement to read, speak, and understand the primary language of the crew, and revising the passenger information cards to limit the seating criteria and emergency instructions to the language of the crew, to reduce the possibility that a person unable to understand that language might occupy an exit seat.

Since the other minor technical changes involving closing the passenger entry doors relieves an unnecessary burden without adversely affecting safety or altering the intent of the rule, notice and public comment procedures on it are unnecessary.

Regulatory Evaluation

The FAA has determined that the expected economic impacts of the amendments are minimal and do not warrant a full regulatory evaluation. The amendments will impose negligible costs and are beneficial in that they (1) relieve a burden on passengers and operators caused by the current definition of exit row seats; (2) ensure that passengers who cannot respond to emergency commands are not seated in exit rows; and (3) remove unnecessarily burdensome and possibly misleading language requirements from passenger information cards. These revisions do not increase the benefits intended and assessed at the time of the original amendment. They merely ensure that these benefits are obtained and that undue burden on the public and on air carriers is avoided.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule is expected to have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, prescribes standards for complying with RFA review requirements in FAA rulemaking actions.

The FAA has determined that the expected economic impact of the amendments are minimal and do not warrant a Regulatory Flexibility Analysis. The amendments are not expected to have a significant economic impact, positive or negative, on a substantial number of small entities.

International Trade Impact Statement

These amendments are expected to have no impact on trade opportunities for U.S. operators doing business in foreign markets or foreign operators doing business in the United States.

Federalism Implications

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have federalism implications requiring the preparation of a Federalism Assessment.

Conclusion

These amendments will clarify the rule so as to eliminate unnecessary burdens on the air carrier industry and its passengers and to avoid an unanticipated safety hazard. Since no cost will be involved in complying with these revisions, the FAA has determined that these amendments involve a regulation which is not major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 2406; February 26, 1979). For this reason, it is certified under the provisions of the Regulatory Flexibility Act that these amendments will not have a significant economic impact, positive or negative, on a substantial number of small entities. The FAA has determined that the expected impact of the amendments is minimal that it does not warrant a full regulatory evaluation.

List of Subjects

14 CFR Part 121

Air safety, Air transportation, Aviation safety, Safety, Transportation.

14 CFR Part 135

Air safety, Air carriers, Air transportation, Aircraft, Airplanes, Aviation safety, Handicapped, Safety, Transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 121 and 135 of the Federal Aviation Regulations (14 CFR parts 121 and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

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

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983).

2. Section 121.585 is amended by removing (j) and revising the heading and paragraphs (a), (b)(3), (c), (d), introductory text, (e)(1), (e)(2), (f), (g), (k), (l), (m)(1), (m)(2), and (n)(1)(iii) to read as follows:

§ 121.585 Exit seating.

(a)(1) Each certificate holder shall determine, to the extent necessary to perform the applicable functions of paragraph (d) of this section, the suitability of each person it permits to occupy an exit seat, in accordance with

this section. For the purpose of this section—

(i) *Exit seat* means—

(A) Each seat having direct access to an exit; and,

(B) Each seat in a row of seats through which passengers would have to pass to gain access to an exit, from the first seat inboard of the exit to the first aisle inboard of the exit.

(ii) A passenger seat having "direct access" means a seat from which a passenger can proceed directly to the exit without entering an aisle or passing around an obstruction.

(2) Each certificate holder shall make the passenger exit seating determinations required by this paragraph in a non-discriminatory manner consistent with the requirements of this section, by persons designated in the certificate holder's required operations manual.

(3) Each certificate holder shall designate the exit seats for each passenger seating configuration in its fleet in accordance with the definitions in this paragraph and submit those designations for approval as part of the procedures required to be submitted for approval under paragraphs (n) and (p) of this section.

(b) * * *

(3) The person lacks the ability to read and understand instructions required by this section and related to emergency evacuation provided by the certificate holder in printed or graphic form or the ability to understand oral crew commands.

* * * * *

(c) Each passenger shall comply with instructions given by a crewmember or other authorized employee of the certificate holder implementing exit seating restrictions established in accordance with this section.

(d) Each certificate holder shall include on passenger information cards, presented in the language in which briefings and oral commands are given by the crew, at each exit seat affected by this section, information that, in the event of an emergency in which a crewmember is not available to assist, a passenger occupying an exit seat may use if called upon to perform the following functions:

* * * * *

(e) Each certificate holder shall include on passenger information cards, at each exit seat—

(1) In the primary language in which emergency commands are given by the crew, the selection criteria set forth in paragraph (b) of this section, and a request that a passenger identify himself or herself to allow reseating if he or she:

(i) Cannot meet the selection criteria set forth in paragraph (b) of this section;

(ii) Has a nondiscernible condition that will prevent him or her from performing the applicable functions listed in paragraph (d) of this section;

(iii) May suffer bodily harm as the result of performing one or more of those functions; or

(iv) Does not wish to perform those functions; and

(2) In each language used by the certificate holder for passenger information cards, a request that a passenger identify himself or herself to allow reseating if he or she lacks the ability to read, speak, or understand the language or the graphic form in which instructions required by this section and related to emergency evacuation are provided by the certificate holder, or the ability to understand the specified language in which crew commands will be given in an emergency.

* * * * *

(g) No certificate holder may allow taxi or pushback unless at least one required crewmember has verified that no exit seat is occupied by a person the crewmember determines is likely to be unable to perform the applicable functions listed in paragraph (d) of this section.

* * * * *

(j) [Removed and Reserved]

(k) In the event a certificate holder determines in accordance with this section that it is likely that a passenger assigned to an exit seat would be unable to perform the functions listed in paragraph (d) of this section or a passenger requests a non-exit seat, the certificate holder shall expeditiously relocate the passenger to a non-exit seat.

(l) In the event of full booking in the non-exit seats and if necessary to accommodate a passenger being relocated from an exit seat, the certificate holder shall move a passenger who is willing and able to assume the evacuation functions that may be required, to an exit seat.

(m) * * *

(1) The passenger refuses to comply with instructions given by a crewmember or other authorized employee of the certificate holder implementing exit seating restrictions established in accordance with this section, or

(2) The only seat that will physically accommodate the person's handicap is an exit seat.

(n) * * *

(1) * * *

(iii) The requirements for airport information, passenger information cards, crewmember verification of appropriate seating in exit seats, passenger briefings, seat assignments, and denial of transportation as set forth in this section;

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

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

Authority: 49 U.S.C. 1354(a), 1355(a), 1471 through 1491, and 1502; 49 U.S.C. 100(g).

5. Section 135.129 is amended by removing paragraph (j) and revising the heading and paragraphs (a), (b)(3), (c), (d), introductory text, (e)(1), (e)(2), (f), (g), (k), (l), (m)(1), (m)(2), and (n)(1)(iii) to read as follows:

§ 135.129 Exit seating.

(a)(1) Except for on-demand operations with aircraft having nine or fewer passenger seats, each certificate holder shall determine, to the extent necessary to perform the applicable functions of paragraph (d) of this section, the suitability of each person it permits to occupy an exit seat, in accordance with this section. For the purpose of this section—

(i) *Exit seat* means—

(A) Each seat having direct access to an exit; and,

(B) Each seat in a row of seats through which passengers would have to pass to gain access to an exit, from the first seat inboard of the exit to the first aisle inboard of the exit.

(ii) A passenger seat having "direct access" means a seat from which a passenger can proceed directly to the exit without entering an aisle or passing around an obstruction.

(2) Each certificate holder shall make the passenger exit seating determinations required by this paragraph in a non-discriminatory manner consistent with the requirements of this section, by persons designated in the certificate holder's required operations manual.

(3) Each certificate holder shall designate the exit seats for each passenger seating configuration in its fleet in accordance with the definitions in this paragraph and submit those designations for approval as part of the

procedures required to be submitted for approval under paragraphs (n) and (p) of this section.

(b) * * *

(3) The person lacks the ability to read and understand instructions required by this section and related to emergency evacuation provided by the certificate holder in printed or graphic form or the ability to understand oral crew commands.

(c) Each passenger shall comply with instructions given by a crewmember or other authorized employee of the certificate holder implementing exit seating restrictions established in accordance with this section.

(d) Each certificate holder shall include on passenger information cards, presented in the language in which briefings and oral commands are given by the crew, at each exit seat affected by this section, information that, in the event of an emergency in which a crewmember is not available to assist, a passenger occupying an exit seat may use if called upon to perform the following functions:

(e) Each certificate holder shall include on passenger information cards, at each exit seat—

(1) In the primary language in which emergency commands are given by the crew, the selection criteria set forth in paragraph (b) of this section, and a request that a passenger identify himself or herself to allow reseating if he or she—

- (i) Cannot meet the selection criteria set forth in paragraph (b) of this section;
- (ii) Has a nondiscernible condition that will prevent him or her from performing the applicable functions listed in paragraph (d) of this section;
- (iii) May suffer bodily harm as the result of performing one or more of those functions; or
- (iv) Does not wish to perform those functions; and,

(2) In each language used by the certificate holder for passenger information cards, a request that a passenger identify himself or herself to allow reseating if he or she lacks the ability to read, speak, or understand the language or the graphic form in which instructions required by this section and related to emergency evacuation are provided by the certificate holder, or the

ability to understand the specified language in which crew commands will be given in an emergency;

(g) No certificate holder may allow taxi or pushback unless at least one required crewmember has verified that no exit seat is occupied by a person the crewmember determines is likely to be unable to perform the applicable functions listed in paragraph (d) of this section.

(j) [Removed and Reserved]

(k) In the event a certificate holder determines in accordance with this section that it is likely that a passenger assigned to an exit seat would be unable to perform the functions listed in paragraph (d) of this section or a passenger requests a non-exit seat, the certificate holder shall expeditiously relocate the passenger to a non-exit seat.

(l) In the event of full booking in the non-exit seats and if necessary to accommodate a passenger being relocated from an exit seat, the certificate holder shall move a passenger who is willing and able to assume the evacuation functions that may be required, to an exit seat.

(m) * * *

(1) The passenger refuses to comply with instructions given by a crewmember or other authorized employee of the certificate holder implementing exit seating restrictions established in accordance with this section; or

(2) The only seat that will physically accommodate the person's handicap is an exit seat.

(n) * * *

(1) * * *

(iii) The requirements for airport information, passenger information cards, crewmember verification of appropriate seating in exit seats, passenger briefings, seat assignments, and denial of transportation as set forth in this section;

Issued in Washington, DC, on October 16, 1992.

Thomas C. Richards,
Administrator.

[FR Doc. 92-25610 Filed 10-26-92; 8:45 am]

BILLING CODE 4910-13-M