

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 17320; Amdt. No. 121-174]

Carry-On Baggage—Flexible Travel Canes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment provides special rules for the storage of flexible travel canes used by blind passengers. Under current regulations, these canes must be placed in storage bins which are not readily accessible to blind passengers. This amendment provides methods by which flexible travel canes may be stored safely within reach of blind passengers.

The amendment further provides that the certificate holder must make available to the public any procedure it establishes relating to the air carriage of persons who may need evacuation assistance. The amendment is necessary since some passengers have experienced difficulty in determining what procedures apply to their use of air transportation. This amendment provides that certificate holders must make such procedures available to the public at airports which the certificate holder serves.

EFFECTIVE DATE: November 20, 1981.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

This final rule is based on Notice of Proposed Rulemaking (NPRM) No. 80-18, published in the *Federal Register* on November 13, 1980 (45 FR 75138). Notice 80-18 proposed amending Section 121.586 of the Federal Aviation Regulations (FAR) which relates to the transportation of passengers who may need evacuation assistance, and Section 121.589 which relates to the storage of carry-on baggage. All interested persons have been given an opportunity to participate in the making of the rule and due consideration has been given to all matters presented.

Regulatory History

This rulemaking action is in response to a petition for rulemaking. By letter dated September 14, 1977, Mr. James Gashel, Chief, Washington Office, National Federation of the Blind (NFB), Suite 212, Dupont Circle Building, 1346 Connecticut Avenue, NW., Washington, D.C. 20026, petitioned the Administrator to revoke those portions of Parts 121 and 123 of the FAR which deal with air transportation of persons who may need evacuation assistance. The FAA first denied the petition on March 10, 1978. The petition was reconsidered based, in part, upon a request by the FAA's Deputy Administrator that the Civil Aeromedical Institute (CAMI) in Oklahoma City conduct additional tests regarding the feasibility and safety of allowing blind persons to keep long, rigid (that is, not folding or telescoping) canes at their seats during takeoff and landing. CAMI accomplished the additional testing and on May 3, 1979, the FAA published in the *Federal Register* (44 FR 25869) the NFB petition and a summary of the CAMI report, and solicited public comments on questions relating to the use of canes by blind passengers. The petition and summary of the CAMI report were published as part of the agency's policy to maximize public involvement in the regulatory process. In addition, this enabled the agency to solicit all available information before a review of the issues presented in the NFB petition was completed to ensure that all regulatory alternatives were considered.

The NFB petition requested the following:

1. Amendment of § 121.13(a) to delete the phrase "121.586."
2. Repeal of § 121.586.
3. Amendment of § 121.589(a) to exclude flexible travel canes carried by blind persons from those items which must be stowed away from the passenger.
4. Amendment of § 123.27(k) to delete the phrase "121.574 and 121.586" and insert instead "and 121.574."

Section 121.13(a) specifies the Part 121 rules which apply to helicopter operations.

Section 121.586 states, in pertinent part, that no certificate holder may refuse transportation to a person who may need evacuation assistance unless the certificate holder has established procedures (including reasonable notice requirements) and the passenger fails to comply with the notice requirements or cannot be carried in accordance with the certificate holder's procedures.

Section 121.589(a) states, in pertinent part, that no certificate holder may

permit an airplane to take off or land unless each article of baggage is properly stowed.

Section 123.27 specifies the rules of Part 121 which are applicable to holders of air travel club certificates.

For purposes of the petition it is assumed that the term "flexible travel canes" does not include folding or telescoping canes since those canes presently can be carried in accordance with § 121.589(a).

The NFB states the following in support of its petition:

Our interest in the repeal of the above-listed FAR sections is as follows: The sections enforce procedures for the carriage of the handicapped on air carriers. The procedures work unreasonable hardship on the blind citizens of the United States in pursuit of their constitutionally protected activities for the following reasons:

(1) The sections require blind citizens to follow procedures set up arbitrarily by private air carriers, which procedures are kept secret from those who must follow them.

(2) The sections enforce humiliating, discriminatory, and unnecessary procedures to ensure "safety," although there is no evidence that the safety hazards cited actually exist.

(3) The sections do not prohibit illegal discrimination in treatment of the handicapped by private air carriers.

(4) The sections were published by the FAA after a long rulemaking process. The FAA published proposed regulations and elicited comments and held hearings on the proposed rules. The sections published as final regulations, however, bore so little similarity to the proposed rules as to nullify the validity of the process leading to their publication. These sections have not been submitted for public comment.

Published with the NFB petition was a summary of a CAMI report entitled "Considerations Relative to the Use of Canes by Blind Travelers in Air Carrier Cabins." This report was completed in 1979 and reported the results of tests accomplished to reveal some of the safety implications of allowing blind travelers to retain rigid canes at their seats during takeoff and landing. Among the issues considered in establishing the test program were the impact cane retention would have on an emergency evacuation, the relative utility of folding or telescoping canes versus rigid ones, the movement of an unsecured cane during high "g" decelerations, and the potential of canes for injuring passengers or damaging evacuation slides.

Also published with the NFB petition were specific questions to the public regarding the use of canes by blind persons aboard aircraft.

The publication of the NFB petition, the CAMI report summary, and the

FS-79-193-P

[As published in the *Federal Register* (46 FR 38048) on July 23, 1981]

questions posed by the FAA resulted in the receipt of 120 comments from various individuals, organizations affiliated with blind persons, and aviation organizations. The majority of these commenters expressed the view that blind passengers should be permitted to retain flexible travel canes at, or in the immediate vicinity of, their seats.

After consideration of the CAMI study and the responses to the NFB petition, it was decided to grant the petition.

On January 18, 1980, the FAA granted the petition submitted by NFB. The petition was granted to allow the initiation of rulemaking to permit the readily accessible stowage of flexible travel canes. It was determined that the special utility that canes have for blind passengers can be preserved while, with appropriate stowage, any conceivable safety hazard posed by their placement in readily accessible locations can be minimized.

The FAA published Notice 80-18 on November 11, 1980 (45 FR 75138), which proposed to amend Part 121. Interested parties were invited to submit comments and suggestions for consideration in formulating the final rule.

Discussion of the Amendments

In response to Notice 80-18, 31 comments were received. Thirty generally support the NPRM; one would have supported it if strapping canes in with the seat belt was permitted. The comments on the merits of the various proposals are discussed below.

After considering the comments, the FAA is amending Part 121 almost as proposed in Notice 80-18. Stowage of canes in overhead racks not equipped with approved restraining devices or doors will not be permitted. Some minor changes in wording and organizing the new materials also are made.

Stowage of Baggage

Under § 121.589, each article of baggage carried aboard by passengers must be stowed in a suitable baggage or cargo stowage compartment, in a cargo bin approved in accordance with § 121.285, or under a passenger seat. This stowage requirement only applies during takeoff or landing. All items carried on aircraft by passengers are considered to be "carry-on baggage." This includes articles of loose clothing, pocketbooks, attache cases, umbrellas, and canes. All these items must be stowed during takeoff and landing in accordance with § 121.589.

Most cargo stowage compartments will not accommodate items the length of a cane. Canes also will not fit under a passenger seat as specified in § 121.589.

Therefore, on most aircraft, the current rule requires that canes be stowed in an appropriate cargo bin that is not always accessible to a blind passenger during flight. As pointed out by many commenters on the NFB petition this imposes a restriction on the mobility of blind passengers during flight since they must first obtain assistance from a flight attendant before they can obtain their canes.¹

While the FAA agrees with many commenters that canes should be stowed near blind passengers, it is necessary that any method of stowage take into consideration the safety of all passengers and crewmembers. Proper stowage of baggage is directly related to the ability of individuals to evacuate an aircraft in an emergency. Improper stowage of baggage could result in blocked aisles or emergency exits, could cause delay in evacuation resulting in loss of crucial time, and could injure passengers or crewmembers. This was recognized in the Operations Review Program Notice No. 8 (43 FR 20452; May 11, 1978), which stated:

During hard or crash landings carry-on baggage has become dislodged from stowage areas, inflicting injuries to passengers and hampering the emergency evacuation of the aircraft. The FAA believes that all carry-on baggage should be screened before being allowed aboard the aircraft to prevent loading of baggage which cannot be properly stowed.

As a result of these concerns, Part 121 was amended (Amendment 121-159 (45 FR 41586; May 19, 1980)) to make several changes to the carry-on baggage stowage requirements. These changes included: installing a means to prevent baggage stored under aisle seats from sliding sideward into the aisle; limiting items which may be placed in overhead racks; and requiring passenger compliance with these requirements. These rules lessen the number of problems crewmembers face and enable them to concentrate on their safety-related duties.

The FAA considers it essential that any modification to the regulations pertaining to carry-on baggage be consistent with these safety considerations.

Based upon the FAA's extensive examination of this subject, stowage of flexible travel canes using the following methods is consistent with the agency's safety mandate and ensures that they

¹ The Civil Aeronautics Board (CAB) is currently engaged in rulemaking which may affect this practice. In an NPRM (SPDR-70; 44 FR 32401; June 6, 1979), the CAB proposed that carriers be required to return canes to passengers other than during takeoff or landing.

are readily accessible to blind passengers.

1. In accordance with § 121.589(a) (1), (2), or (3);

2. Under a series of passenger seats in the same row of the aircraft as long as the cane does not protrude into the aisle;

3. Between a window passenger seat and the fuselage as long as the cane is flat on the floor and is not in an exit row;

4. Beneath any window passenger seat and the seat directly in front of the passenger as long as the cane is flat on the floor; and

5. In accordance with any other method approved by the Administrator.

Notice 80-18 also proposed to permit stowage in an overhead rack with a solid bottom as long as the cane was flush with the bottom. This is not being implemented, as discussed below.

A brief discussion of these methods follows:

1. Current § 121.589 provides stowage requirements for all carry-on baggage including canes. Therefore, canes can be properly stowed in a suitable closet or baggage or cargo stowage compartments, in a cargo bin, or under a passenger seat.

2. Current § 121.589 allows carry-on baggage to be stowed under a passenger seat. This requires that the stowage be under a single seat. While a flexible travel cane will not fit under one seat, it will fit under a series of seats. New § 121.589(e)(1) allows a blind passenger to place her or his cane under a series of adjoining seats in the row immediately in front of her or him. This will make the cane readily accessible to the passenger. Any flexible cane stowed in this manner must be flat on the floor and must not protrude into an aisle. This will lessen the possibility that the cane will come dislodged. The proposed amendment did not specifically state that the cane must be flat on the floor, but this final rule includes those words to make this requirement clear. Four comments specifically address this method, all of which support the proposal.

Notice 80-18 proposed that the cane be "flush with" the floor. A commenter points out, however, that this wording could be construed to require that the cane be in a recess and rest beneath the surface of the floor. This is not what was intended. The FAA agrees that the "flush with" wording could be misconstrued. The wording of this section, and of § 121.589(e) (2) and (3) discussed below, is changed to specify that the cane must be "flat on" the floor. The cane must have its entire length resting on the surface of the floor.

3. Section § 121.589(e)(2) also allows canes to be placed between the window seat and the fuselage of the aircraft. A cane placed in such a location will be secure and should not interfere with passengers in the event of an emergency. The rule requires that the entire length of the cane be flat on the floor and does not allow such stowage in an exit row. Under Notice 80-18 the cane was required to be "flush with" the floor, but this wording is changed to "flat on," as discussed above.

4. Carry-on baggage can be placed under a single seat; however, flexible travel canes are too long to be stowed in this manner. New § 121.589(e)(3) allows blind passengers sitting at a window seat to place their flexible travel canes longitudinally underneath the seat in front of them and underneath their seat if the cane is adjacent to or as close as possible to the fuselage and the passenger is not in an exit row. Canes must be placed "flat on" the floor, as discussed above.

5. New § 121.589(e)(4) allows other methods of stowage if approved by the Administrator. To obtain approval, the particular carrier is required to submit a plan showing a method of stowage which would be secure and which would not interfere with evacuation in the event of an emergency. One possible method would be the use of clips secured to a bulkhead.

Stowage in accordance with these rules will give blind passengers ready access to their canes and will maintain the required level of safety.

In addition to submitting comments on the Notice 80-18 proposals, commenters were invited to suggest alternate methods of stowage. Several commenters suggest that clips or velcro strips be attached to bulkheads to secure canes. This may prove to be a satisfactory means of stowing canes. Under § 121.589(e)(4) of the new rule, individual certificate holders may submit such a method to the Administrator for approval.

Several commenters to Notice 80-18 continue to advocate that passengers be allowed to hold canes during takeoff and landing while securing them under their seat belts. This method was examined by the CAMI in its report, "Considerations Relative to the Use of Canes by Blind Travelers in Air Carrier Aircraft Cabins." This report is in the docket and a summary was published with the NFB petition in the Federal Register. The FAA has determined that securing canes in seat belts with the passenger creates safety hazards for both the blind passenger and for others. With some methods of stowage, the cane is resting next to the body and the

seat belt unavoidably has some slack. During a crash, an occupant with a slack seat belt will tend to impact the belt with sufficient speed to cause some injury, perhaps to internal organs. The cane next to the body may break, and will tend to be forced into the body. Another method of stowage is to have the cane handle inserted into the corner area between the seat belt and seat fabric, with the other end inserted under the seat in front of the passenger. However, in order to exit from the row, passengers would have to step over the cane or the cane would have to be removed. This would create an unacceptable delay and possibility of tripping in an emergency evacuation. In view of the alternate methods of stowage allowed by this amendment, and because of the safety hazards involved, stowage of travel canes under the seat belts is not allowed.

New § 121.589(e) (2) and (3) do include some restrictions for blind passengers: if they are seated in exit rows, they may not store their canes near the windows in the methods indicated. While several commenters object to any restrictions on passenger seating, the rule is considered to provide a minimal restriction on the individual. Every effort was made in developing this rule to afford blind passengers the same rights as all others traveling by air. Similar to restrictions placed on other items utilized by passengers, certain restrictions as to the locations in which canes can be stowed are necessary. The Association of Flight Attendants (AFA) in its well-thought-out comment perhaps best addresses this issue by stating:

The Association does not advocate the unrestricted right of a blind passenger to retain his cane with him during flight, under any conditions he alone determines. Such a situation where one individual can make an arbitrary decision which may adversely affect the safety of others is intolerable. AFA does assert, though, that the various alternatives discussed above [this refers to the alternatives discussed in its comments, not necessarily to the alternatives in this rulemaking] are consistent with both the safety of all passengers and a blind traveler's desire to retain his cane. If a blind passenger is given the choice of either carrying a folding cane or carrying a rigid cane, but being seated in a particular seat, it seems obvious that reasonable efforts have been made to accommodate the particular needs of these travelers.

The fact that a limitation on seat selection may be incidental to one of these options is immaterial for three reasons. First, a blind passenger could effectively avoid the seat limitation by opting to carrying a folding cane. Second, only those seats located in exit rows or lacking the physical constraints for securing canes would be affected by the restriction. An adequate selection of seats

would still be available. Third, no passenger—blind or not blind—is ever guaranteed that he will have the seat he wants on the flight he wants on the day he wants. The realities of high passenger volume in air travel simply do not permit such guarantees. Thus, the question of whether a blind passenger is "willing" to sit in certain seats need not even be considered if adequate alternatives, as indicated above, are available.

Section 121.589(b), effective August 31, 1980, states that the only baggage that may be placed in an overhead rack without restraining devices or doors are articles of loose clothing. Under Notice 80-18, a proposal was made to permit flexible travel canes to be placed in such racks if they had solid bottoms. These racks are immediately above the passengers and would have placed the canes within the reach of passengers. It was reasoned that flexible travel canes are light enough not to cause any danger to passengers if they were in such a rack. In addition, it was anticipated that, in most cases, other items would be placed on top of the canes in the racks, lessening the possibility that they would come out of the rack.

Of the seven comments received particularly addressing this method, five commenters, including one blind person and four aviation associations, object to the proposal. The Air Line Pilots Association maintains that stowage in racks without doors does not provide adequate safety. The Association of Flight Attendants states that it cannot be assumed that other articles would be placed on top of the canes, and that placing canes in open racks would produce an unacceptable safety hazard. As stated by the Aerospace Industries Association of America:

Even lightweight, flexible canes can become dangerous missiles during unplanned high "G" load conditions. The sharp ends especially can be hazardous to personnel, particularly to the eyes, ears and face. We believe the provisions of 121.589 as amended by adding paragraph 4 provide sufficient alternatives for stowage of flexible canes by blind travelers to obviate the need for unrestrained stowage in overhead racks.

After further considering the potential hazards, the FAA agrees with these commenters. The other methods are sufficient to provide convenient stowage of canes. Accordingly, because of the potential safety hazard involved, stowage of canes in open overhead racks is not permitted.

In Notice 80-18 the proposed amendments to § 121.589 were to be inserted as new paragraph (4) to paragraph (a). The wording of the amendment does not complete the sentence of paragraph (a), however.

These alternate methods of stowing travel canes therefore are incorporated in a new paragraph (e). Paragraph 121.589(c) is amended to require that passengers comply with instructions given by crewmembers regarding compliance with new paragraph (e).

Some commenters suggest that a definition of "flexible travel cane" be inserted into the regulations. While they are not subject to precise definition, they can be described as follows: flexible travel canes are lightweight, generally long and thin, generally made of aluminum or fiberglass, usually of white or metallic color. These amendments do not include the heavier, shorter canes, such as those used for support in walking. It is the light weight and the flexibility of the travel canes which allow their safe stowage under this amendment.

Passengers Needing Assistance

Notice 80-18 proposed amending § 121.586 which relates to the transportation of individuals. Section 121.586 provides that no certificate holder may refuse transportation to a passenger who may need the assistance of another to move expeditiously to an exit in the event of an emergency unless the certificate holder has established procedures (including notice requirements) relating to such persons, and either the passenger has not complied with the notice requirements of the procedures or the passenger cannot be carried in accordance with the procedures.

The NFB points out that passengers have had difficulty in obtaining information from the carriers concerning the procedures established in accordance with § 121.586. The FAA agrees that this point has merit and, therefore, is amending § 121.586 to require that all procedures established by the certificate holder under this section be made available to the public at each airport served by the certificate holder. A carrier would meet this requirement by having one complete set of these procedures available for inspection by any interested individual.

Notice 80-18 invited comments as to whether these procedures should also be available at locations other than airports and whether they should be available in braille. Of the two comments specifically addressing this issue, one supports the amendment as proposed, and one wishes it expanded. Making procedures "available to the public" encompasses more than merely providing a copy for public inspection. It is anticipated that certificate holders will explain their procedures to all who inquire. Further, not all blind people

read braille. In view of these considerations, and the extra costs that would be involved, it is not considered necessary to require that braille copies be made available. It has further been determined that it is not necessary to require availability at locations other than airports.

The grant of petition included the following discussion of another issue raised in the NFB petition:

In addition, that portion of the NFB petition that requires the initiation of rulemaking concerning the amendment of § 121.586 which governs the carriage of persons who may need the assistance of others in the event of an emergency evacuation is granted. Inasmuch as § 121.586 was promulgated for the benefit of an airline passenger population that greatly exceeds the potential airline passengers currently represented by the NFB, and since there was virtually no comment from the public on that section when the NFB petition was published, comment will be sought from the public before any action is taken to amend or repeal its protective provisions.

The FAA has received some complaints about inequities existing in the air carrier procedures. The CAB, as part of SPDR-70 (see footnote 1), is currently reviewing air carrier procedures to determine what is discriminatory. Included in that notice are questions relating to refusal of service and availability of service and equipment. Consistent with a stated purpose of Executive Order 12291, signed by the President on February 17, 1981, the FAA will not duplicate the regulatory effort of the CAB.

In Notice 80-18, the FAA sought comments on whether blind individuals should be excluded from the requirement of § 121.586. In its petition, the NFB questions the need for this section. Two comments specifically address this question, one supports and one opposes including blind individuals in § 121.586. Clear evidence has not been presented to show that this rule has created unnecessary burdens and, therefore, should be amended. In light of this and the CAB review, the FAA will take no action at this time but will continue to monitor developments.

Economic Evaluation

The FAA conducted a regulatory evaluation which is included in the regulatory docket for this action. FAA determined that there is only a minimal-to-negligible cost impact on certificate holders. Specifically, each Part 121 certificate holder is required to make available to the public at each airport it serves a copy of each procedure it establishes in accordance with § 121.586(a)(1), the cost of which is considered minimal. Costs to certificate

holders associated with the amendments to § 121.589 are negligible. These costs involve informing their employees as to the requirements of the new regulation.

This final rule provides benefits to the blind population that chooses to fly. It relieves hardships on blind citizens by allowing more convenient stowage of flexible canes, relaxes restrictive procedures by providing alternate safe methods of stowing flexible travel canes, and eliminates the conflicts which have existed between the requirement to safely stow all carry-on baggage and the desires of blind passengers to keep their canes near them. It makes available more readily the established procedures of the certificate holder concerning carriage of passengers who may need evacuation assistance. In addition, stowage of flexible travel canes in an area that is readily accessible preserves the special utility of canes for the blind person.

Accordingly, the benefits of this amendment outweigh any burden created.

Adoption of the Amendment

Accordingly, Part 121 of the Federal Aviation Regulations (14 CFR Part 121) is amended, effective November 20, 1981, as follows:

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

1. By adding a new paragraph (d) to § 121.586 to read as follows:

§ 121.586 Authority to refuse transportation.

* * * * *

(d) Each certificate holder shall make available to the public at each airport it serves a copy of each procedure it establishes in accordance with paragraph (a)(1) of this section.

2. By amending § 121.589(c) and adding a new paragraph (e) to read as follows:

§ 121.589 Carry-on baggage.

* * * * *

(c) Each passenger must comply with instructions given by crewmembers regarding compliance with paragraphs (a), (b), and (e) of this section.

* * * * *

(e) In addition to the methods of stowage in paragraph (a), flexible travel canes carried by blind individuals may be stowed—

(1) Under any series of connected passenger seats in the same row, if the

cane does not protrude into an aisle and if the cane is flat on the floor; or

(2) Between a nonemergency exit window seat and the fuselage, if the cane is flat on the floor; or

(3) Beneath any two nonemergency exit window seats, if the cane is flat on the floor; or

(4) In accordance with any other method approved by the Administrator.

(Secs. 313(a), 601, 602, and 609 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354 Cal, 1421, 1422, and 1429), and Section 6(c) of the Department of Transportation Act (49 U.S.C. 1055(c)))

Note.—The FAA has determined that this amendment will have minimal cost impact. Specifically, there will be only a minimal impact on certificate holders (for some additional copies of a few pages contained in their manuals). It, therefore, is not a "major rule" under Executive Order 12291; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, D.C., on June 22, 1981.

J. Lynn Helms,
Administrator.

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