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issuance of changes to
FAR Parts 121, 123,
and 135

Title 14—Aeronautics and Space
CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Doc. No. 12881; Amdt. Nos. 121-133; 123-7;
and 135-44]

AIR TRANSPORTATION OF HANDICAPPED PERSONS WHO MAY NEED EVACUATION ASSISTANCE

Certification and Operations

The purpose of these amendments to Parts 121 and 135 of the Federal Aviation Regulations is to provide rules for the safe carriage by the holders of Parts 121 and 135 certificates of persons who may require the assistance of another person during an emergency evacuation.

Interested persons have been afforded an opportunity to participate in making of this amendment by a Notice of Proposed Rule Making (Notice 74-25) issued July 2, 1974, and published in the FEDERAL REGISTER on July 5, 1974 (39 FR 24667). Due consideration has been given to all comments presented in response to the notice. Except as specifically discussed hereinafter, and except for minor editorial changes, these amendments and the reasons therefor are the same as those in Notice 74-25.

Because of increasing concern about the availability of adequate air carriage for the millions of handicapped persons in the United States, the Civil Aeronautics Board (CAB) on October 14, 1971, issued an advance notice of proposed rule making (ANPRM) to notify the public of the Board's consideration of rule making action to amend its "Economic Regulations" (14 CFR Part 221) and "Policy Statements" (14 CFR Part 399) to provide for terms and conditions governing the carriage by air of physically handicapped persons.

Subsequent to the issuance of the CAB notice, the CAB referred the matter to the Department of Transportation (FAA) for a determination of the relevant safety parameters associated with the carriage by air of disabled persons, and deferred its own proceedings

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until the appropriate safety standards had been established. Consequently, on May 30, 1973, the FAA issued an ANPRM, Notice No. 73-16 (published in the FEDERAL REGISTER on June 5, 1973; 38 FR 14757), entitled "Air Transportation of Handicapped Persons." The purpose of that notice was to solicit comments from interested persons in order to select a course, or alternative courses, of action to take in order to develop a notice of proposed rule making (NPRM). Moreover, subsequent to the issuance of the ANPRM, and due to significant public interest, six public hearings concerning the transportation of handicapped persons were held throughout the United States.

Based upon the comments received in response to the ANPRM, statements made at the public hearings, and the FAA's consideration of the problems of evacuating persons with specific types of handicaps and the effect the carriage of those persons might have on the emergency evacuation of the other passengers, the FAA issued Notice 74-25 proposing to limit the carriage of handicapped persons in the interest of air safety only when those persons need the assistance of other persons to expeditiously evacuate the airplane.

The FAA received 1,551 public comments in response to Notice 74-25. Approximately 1,380 were opposed to proposed new § 121.584, *Carriage of persons needing evacuation assistance*. The main objections were to: the definition of a handicapped person; the provision for a physician's statement; the restriction of the number of handicapped passengers; and the designation of specific seating locations. Comments received also indicated that the provision for carriage of large groups of handicapped persons was in need of clarification.

Subsequent to the issue of Notice 74-25, the FAA Civil Aeromedical Institute (CAMI) conducted simulated air carrier aircraft evacuations using individuals with actual handicaps, alone and in groups of persons without handicaps. The CAMI research was directed at determining where handicapped passengers should be seated in an air carrier aircraft so that in the event of an emergency evacuation they can leave the aircraft, assisted or unassisted, by the safest, most expeditious route while not slowing the evacuation of fellow passengers. The results of this research indicate that the seating requirements of proposed § 121.584, particularly with respect to nonambulatory handicapped persons, would not be appropriate.

As a part of its research, CAMI examined air carrier accident files to determine if any evacuation problems have been attributed to handicapped persons. It determined that official reports of air carrier jet aircraft incidents and accidents from 1961 to the present do not contain any reference to significant delays created by handicapped passengers in aircraft evacuations. Of note is the fact that from 1970 to 1973 the National Transportation Safety Board and the FAA recorded a total of 23 evacua-

tions for which passengers and crew had time to prepare, four of which involved handicapped passengers, and 62 evacuations for which there was no time to prepare, eleven of which involved handicapped passengers. Although the potential for handicapped passengers delaying aircraft evacuations would appear minimal, a definitive statement in this regard cannot be made due to inadequate official documentation of aircraft evacuations with respect to delay, if any, caused by handicapped persons.

In light of the large number of adverse comments received in response to proposed new § 121.584, the results of the recent CAMI research, the difficulty of prescribing seating procedures applicable to all aircraft configurations, and the lack of evidence of significant delays created by handicapped persons in actual aircraft evacuations, the FAA has determined that it would not be in the public interest to adopt § 121.584 as proposed. The FAA recognizes that difficulties encountered in providing transportation to these passengers may vary from certificate holder to certificate holder because of differences in aircraft interiors, passengers loading facilities, and other aspects of the certificate holder's operating environment. In view of this, the FAA has concluded that each certificate holder should be allowed to develop procedures appropriate to its own operations and aircraft.

Accordingly, the regulation, adopted as § 121.586, provides that a passenger may not be refused transportation on the basis that his transportation would or might be inimical to safety of flight unless the certificate holder has established procedures (including reasonable notice requirements) for the carriage of passengers who may need the assistance of another person to move expeditiously to an exit in the event of an emergency. Moreover, if the certificate holder has these procedures, he may not refuse to carry the passenger unless: (1) the passenger fails to comply with the notice requirements in the certificate holder's procedures; or (2) the passenger cannot be carried in accordance with the certificate holder's procedures. A copy of the procedures must be provided to the FAA district office charged with overall inspection of the certificate holder's operation.

Section 121.586 also provides that, whenever the Administrator finds that revisions in the certificate holder's procedures are necessary in the interest of safety or in the public interest, the certificate holder is required, after notification by the Administrator, to make any changes in those procedures that are found necessary by the Administrator. Within 30 days after the certificate holder receives such notice, it may file a petition to reconsider the notice with the FAA district office charged with the overall inspection of the certificate holder's operations. The filing of a petition to reconsider stays the notice pending a decision by the Administrator. However, if the Administrator finds that there is an emergency that requires immediate ac-

tion in the interest of safety in air commerce, he may, upon a statement of the reasons, require a change effective without stay.

It should be noted that § 121.586, as adopted, does not affect the authority of the pilot in command under § 91.3.

The FAA is issuing an advisory circular that will be of assistance to certificate holders in developing their procedures. The advisory circular, entitled "Air Transportation of Handicapped Persons," is based on the information gained as a result of the recent CAMI research and from comments received in response to Notice 74-25. It contains guidance material for use by certificate holders in training their personnel. It will help them to become aware of the problems that the handicapped face in air travel and how to help alleviate those problems. Some of the subjects covered are: the appropriate attitude of personnel toward the handicapped; assisting passengers with specific disabilities; what to expect from guide dogs; and assisting handicapped passengers traveling in groups. In addition, the advisory circular recommends locations for seating handicapped passengers where they will not slow the evacuation of other passengers and, at the same time, be in the best position to effect their own evacuation. Sources where additional information on the transportation problems of handicapped can be obtained are also provided in the advisory circular.

Consistent with the intent of Notice 74-25, § 121.13 is being amended to include new § 121.586 in the list of those provisions with which persons operating helicopters under Part 121 must comply.

One commentator objected to the proposed amendment to § 121.311(d)(2) that would except a person who is unable to sit erect for a medical reason from the requirement that the back of his or her seat be in the upright position for take-off and landing, on the ground that, if the aircraft were full, the reclined seat back would constitute an obstruction. The FAA does not agree because even in a full aircraft the person could be seated in the last row before a partition, and, thus, comply with the requirement that the other passengers' access to the aisle and any emergency exit not be blocked. Accordingly, § 121.311(d)(2) has been amended as proposed.

Several commentators objected to proposed new § 121.571(a)(3) that would require an individual briefing before take-off of each handicapped person and his or her attendant, if any, concerning procedures to be followed in the event of an emergency evacuation. Some suggested that there is not sufficient time to brief those passengers and one suggested that the briefing be conducted after takeoff. Two commentators felt that repeated instructions before takeoff for each leg of a flight would be an annoyance. One commentator believed that the proposed rule is not sufficiently specific as to the briefing required.

The FAA believes that the briefing of all handicapped persons should be com-

pleted before takeoff, even if takeoff must be delayed, since an emergency evacuation might be necessary prior to takeoff. However, the FAA agrees that the rule should be clarified and § 121.571 (a) (3), as adopted, requires that the flight attendant brief the person and his attendant, if any, on the routes to each appropriate exit and the most appropriate time to begin moving to an exit in the event of an emergency. It also requires that the flight attendant inquire as to the most appropriate manner of assisting the person to prevent pain and further injury.

The FAA agrees that a briefing before each leg of a flight may be impractical and an annoyance. Therefore, § 121.571 (a) (3), as adopted, does not apply to a person who has been given a briefing before a previous leg of a flight in the same aircraft when the flight attendants on duty have been advised as to the most appropriate manner of assisting the person so as to prevent pain and further injury. An exception for a flight of more than one leg in the same aircraft has also been incorporated into new § 135.81 (b), as adopted.

Notice 74-25 proposed to amend § 121.589 by adding a new paragraph (d) that would have required the certificate holder to ensure that each crutch or cane carried aboard by a passenger who may need it in the event of an emergency evacuation is stowed so that it is readily accessible. Although this proposal received favorable comment, the CAMI research indicated that the use of crutches or canes by handicapped persons during an evacuation can result in delay. However, the CAMI evacuation tests showed that many non-ambulatory handicapped persons reached the exit with remarkable speed using seat backs for support or in the sitting position, pulling themselves backwards with their arms. Moreover, the FAA has determined that crutches and canes can cause serious damage to evacuation slides. Accordingly, the FAA has not adopted proposed § 121.589(d), and, thus, these items will have to be carried in accordance with § 121.589(a).

Finally, § 123.27 is being amended to exclude new § 121.586 from those provisions of Part 121 with which air travel clubs must comply. This is consistent with the intent of Notice 74-25.

(Sections 313(a), 601, 604, and 1111 of the Federal Aviation Act of 1958; 49 U.S.C. 1354 (a), 1421, 1424, and 1511. Section 6(c) of the Department of Transportation Act; 49 U.S.C. 1655 (c).)

In consideration of the foregoing, and for the reasons stated in Notice 74-25, Parts 121, 123, and 135 of the Federal Aviation Regulations are amended, effective May 16, 1977, as follows:

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

§ 121.13 [Amended]

1. By amending § 121.13(a) by inserting the phrase "121.586," after the phrase "121.575,".

§ 121.311 [Amended]

2. By amending § 121.311(d) (2) by striking out the words "stretcher cases" and by inserting in place thereof the words "persons who are unable to sit erect for a medical reason".

3. By amending § 121.417(b) (3) (iii) to read as follows:

§ 121.417 Crewmember emergency training.

- • • • •
- (b) • • •
- (3) • • •

(iii) Ditching and other evacuations, including the evacuation of persons and their attendants, if any, who may need the assistance of another person to move expeditiously to an exit in the event of an emergency.

4. By amending § 121.571 by adding new paragraphs (a) (3) and (a) (4) to read as follows:

§ 121.571 Briefing passengers before takeoff.

- (a) • • •
- (3) Except as provided in paragraph (a) (4) of this section, before each takeoff a flight attendant assigned to the flight shall conduct an individual briefing of each person who may need the assistance of another person to move expeditiously to an exit in the event of an emergency. In the briefing the flight attendant shall—

(i) Brief the person and his attendant, if any, on the routes to each appropriate exit and on the most appropriate time to begin moving to an exit in the event of an emergency; and

(ii) Inquire of the person and his attendant, if any, as to the most appropriate manner of assisting the person so as to prevent pain and further injury.

(4) The requirements of paragraph (a) (3) of this section do not apply to a person who has been given a briefing before a previous leg of a flight in the same aircraft when the flight attendants on duty have been advised as to the most appropriate manner of assisting the person so as to prevent pain and further injury.

5. By adding a new § 121.586 to Part 121 to read as follows:

§ 121.586 Authority to refuse transportation.

(a) No certificate holder may refuse transportation to a passenger on the basis that, because the passenger may need the assistance of another person to move expeditiously to an exit in the event of an emergency, his transportation would or might be inimical to safety of flight unless—

- (1) The certificate holder has established procedures (including reasonable notice requirements) for the carriage of passengers who may need the assistance of another person to move expeditiously to an exit in the event of an emergency; and
- (2) At least one of the following conditions exist:

(i) The passenger fails to comply with the notice requirements in the certificate holder's procedures.

(ii) The passenger cannot be carried in accordance with the certificate holder's procedures.

(b) Each certificate holder shall provide the FAA district office charged with the overall inspection of its operations with a copy of each procedure it establishes in accordance with paragraph (a) (2) of this section.

(c) Whenever the Administrator finds that revisions in the procedures described in paragraph (a) (2) of this section are necessary in the interest of safety or in the public interest, the certificate holder, after notification by the Administrator, shall make those revisions in its procedures. Within 30 days after the certificate holder receives such notice, it may file a petition to reconsider the notice with the FAA district office charged with the overall inspection of the certificate holder's operations. The filing of a petition to reconsider stays the notice pending a decision by the Administrator. However, if the Administrator finds that there is an emergency that requires immediate action in the interest of safety in air commerce, he may, upon a statement of the reasons, require a change effective without stay.

PART 123—CERTIFICATION AND OPERATIONS: AIR TRAVEL CLUBS USING LARGE AIRPLANES

§ 123.27(k) [Amended]

6. By amending § 123.27(k) by deleting the phrase "and 121.574." and substituting therefor the phrase "121.574, and 121.586.".

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS OF SMALL AIRCRAFT

7. By amending § 135.27 by striking out the period at the end of the paragraph (b) (14) and inserting a semicolon in place thereof, revising paragraph (b) (15), and adding a new paragraph (b) (16) to read as follows:

§ 135.27 Manual requirements.

(b) • • •

(15) Procedures for the evacuation of persons who may need the assistance of another person to move expeditiously to an exit in the event of an emergency; and

(16) Other procedures and policy instructions pertinent to the certificate holder's operations, that are issued by the certificate holder.

8. By revising § 135.81 to read as follows:

§ 135.81 Briefing of passengers before flight.

(a) Before each takeoff the pilot in command shall ensure that all passengers are familiar with information on—

- (1) Smoking;
- (2) Use of seat belts;

(3) Location and means of opening the passenger entry door and emergency exits;

(4) Location of survival equipment;

(5) If the flight involves extended over-water operation, ditching procedures and the use of required flotation equipment; and

(6) If the flight involves operations above 10,000 feet MSL, the normal and emergency use of oxygen.

(b) Before each takeoff the pilot in command shall ensure that each person who may need the assistance of another person to move expeditiously to an exit in the event of an emergency and his attendant, if any, has received a briefing as to the procedures to be followed in the event of an evacuation. The requirements of this paragraph do not apply to a person who has been given a briefing before a previous leg of a flight in the same aircraft.

9. By amending § 135.139 by striking out the word "and" at the end of the paragraph (g) and the period at the end of paragraph (h); by adding a semicolon followed by the word "and" at the end of paragraph (h); and by amending paragraph (c) and adding a new paragraph (i) to read as follows:

§ 135.139 Initial and recurrent flight attendant crewmember testing requirements.

* * * * *

(c) Crewmember assignments, functions, and responsibilities during ditching and evacuation, including evacuation of persons who may need the assistance of another person to move expeditiously to an exit in the event of an emergency;

* * * * *

(i) Seating of persons who may need the assistance of another person to move expeditiously to an exit in the event of an emergency as prescribed by the certificate holder's operations manual.

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Orders 11821 and 11949 and OMB Circular A-107.

Issued in Washington, D.C., on March 25, 1977.

JOHN McLUCAS,
Administrator.