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Department of Transportation

Federal Aviation Administration

14 CFR Part 135

**Exit Seating for On-Demand Operations;
Rule**

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No. 25821; Amendment No. 135-50]

RIN 2120-AE44

Exit Seating for On-Demand Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is amending the exit seat rule to exclude from the applicability of the rule commuter operations with aircraft having 9 or fewer passenger seats and on-demand air taxi operations with aircraft having 19 or fewer passenger seats. These revisions relieve certain part 135 operators and persons with disabling conditions of unnecessary burdens. They eliminate requirements that are not necessary for safe, expeditious evacuations in the event of an emergency.

EFFECTIVE DATE: July 29, 1994.

FOR FURTHER INFORMATION CONTACT: Donell Pollard, AFS-203, Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8166.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 1990, the FAA adopted Amendment No. 135-36, which revised § 135.129 of the Federal Aviation Regulations to increase the chances of occupant survival following a crash. The section provides that certificate holders operating aircraft affected by the section (except on-demand operations with nine or fewer passenger seats) may not seat a passenger in an exit row seat who is not willing and able, 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.

After further consideration, the FAA has determined that § 135.129 should be amended to exclude from its coverage scheduled operations in aircraft having nine or fewer passenger seats. Certificate holders attempting to comply with the rule in regard to those aircraft have raised several issues concerning application of the rule. First, the limited number of seats in such aircraft

increases the likelihood that persons not meeting the criteria in paragraph (b) of the rule could be denied transportation. Such a denial is especially likely in cases where the passenger seating configuration results in most or all of the seats being designated as exit seats. Due to the limited number of passengers involved, it may not always be possible to find someone willing, and qualified, to move into an exit seat when it must be vacated by an unqualified person. In a fully occupied flight, application of the rule could result in that passenger being denied transportation. Additionally, persons who do not meet the criteria for exit seating established by § 135.129 would be completely barred from certain aircraft (e.g., Cessna 206, Cessna 207, Beechcraft 36, Beechcraft 58, and Beechcraft 55) with passenger seating configurations that result in every seat in the aircraft being designated as an exit seat.

Consideration of such consequences, in view of the objective of the rule and in light of various seating configurations known to be used in operations to which the rule would apply, indicated that safety would not require these results. The aircraft involved are uniformly quite small, with short distances between exits. Passengers may choose one or another exit without concern for the distance factor. The ratio of exits to passengers in such aircraft is very high in comparison to larger aircraft, thus affording more opportunities for emergency evacuation. The seats in such aircraft are often in single units, around a central open space in the cabin, as opposed to being in rows and aisles, thus providing ready access to window and door exits for all passengers. The exits in such aircraft are typically small, light, and close to the ground, involving no slides, such as those that are found in larger aircraft, thus obviating some of the criteria in paragraph (b) of the rule. In addition, § 135.177 requires that each passenger be briefed orally on the location and means of operation of each passenger entry door and emergency exit.

The FAA further determined that safety does not require that the rule apply to on-demand operations with aircraft having 19 or fewer passenger seats. Seating configurations in those aircraft tend to be different from the standard aisle and row seating found in aircraft used in commuter operations, and frequently include single units around a central open space in the cabin, couch seats, and club seating, which provide numerous undefined, unobstructed paths to the exits. Generally, affinity groups charter these aircraft, and individual seat assignments

are not made. Passengers using these aircraft who travel in affinity groups are more likely to be aware of each other's physical condition than is the case when passengers are drawn from the general population mix. And, as is the case in all operations under part 135, § 135.117 requires that each passenger receive an oral briefing on the location and means of operation of each passenger entry door and emergency exit.

Based on the above discussion, the FAA published a notice of proposed rulemaking (NPRM) on October 26, 1992 (57 FR 48666). The comment period closed on November 27, 1992.

At a few places in the preamble to the NPRM, the FAA inadvertently used the phrases "air carrier" and "air carriers" to identify certain part 135 certificate holders that would be the intended beneficiaries of this rule. The FAA did not intend to limit the relief that this rule would provide to only those part 135 certificate holders that are air carriers. In fact, in the proposed rule and in the rule language adopted today, the relief is not limited to part 135 operators that are air carriers. This relief also gives the same relief to all part 135 operators that operate aircraft with the specified passenger seating capacity.

Finally, it was the FAA's intention to make the exception provision in paragraph (a)(1) of § 135.129 applicable to all paragraphs in that section. Unfortunately, as presently written, the exception might be read to only apply to paragraph (a)(1). The FAA intended that certain operations (as defined in the exception clause) would not have to comply with any portion of the rule. In fact, the FAA originally stated, "This rule does not affect exit row seating in the on-demand operations of air taxis that have nine or fewer passenger seats." (55 FR 8054, March 6, 1990) The FAA did not merely state that the exception was only applicable to that part of the rule dealing with the certificate holder's duty to make a determination about the suitability of the person occupying the exit seat. To clarify its intention, the FAA has reorganized § 135.129(a). This reorganization eliminates any ambiguity that might lead someone to incorrectly conclude that the exception provision only applies to § 135.129(a).

Discussion of Comments

Eight comments were received in response to the notice of proposed rulemaking (NPRM). Commenters included three associations, three air carriers, one aviation insurance company, and one special interest group, the Paralyzed Veterans of

America (PVA). All eight commenters, including the Regional Airline Association (RAA) and the Helicopter Association International (HAI), supported the proposed rule. They offered additional comments in support of the proposed rule.

Two commenters stated that an exemption for smaller aircraft categories is necessary because the intent of the current exit seat rule is clearly for large airplanes. Four commenters stated that the seating configurations in small aircraft are different than larger aircraft and, as such, the density of seating and the ratio of passengers to available exits is very good, thus making it unnecessary to have the exit seat rule apply to the smaller aircraft categories. One commenter stated that under the current rule, too high a percentage of the seats in a small aircraft are required to be exit seats.

Two commenters indicated that the aircraft under on-demand operations are typically configured with seating arrangements different from the standard aisle and row seating found in aircraft used in commuter operations. They stated that passengers using these aircraft who travel in groups where the passengers know one another are more likely to be aware of each other's physical condition and be able to respond as necessary.

Three commenters indicated that a large percentage of the Alaskan population—student passengers under age 15 and older passengers—would be unable to use its scheduled operations to access health, educational, and other essential services.

In addition to its support, the Paralyzed Veterans of America recommended extending the rule to cover small aircraft with 29 or fewer seats. The FAA considered but disagrees with PVA's recommendation because aircraft with 20 to 29 passenger seats are more likely to have a sufficient number of non-exit seats.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

Regulatory Evaluation Summary

Proposed 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 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule (1) would generate benefits that would justify its costs and is not a "significant regulatory action" as defined in the executive order; (2) is not "significant" as defined in DOT's Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not constitute a barrier to international trade.

The FAA has determined that the expected economic impact of the amendment will be minimal and does not warrant a full regulatory evaluation. As indicated in the above discussion, the exclusion of commuter operations with 9 or fewer passenger seats and on-demand aircraft operations having 19 or fewer passenger seats from the rule is not expected to result in significant impediments to successful emergency evacuations. This conclusion is based on a review of the typical passenger configurations and exit availability of these smaller aircraft. The FAA did not give adequate consideration to the unique characteristics of these aircraft and their operations at the time it prepared the regulatory evaluation of Amendment No. 135-36.

The amendment is beneficial in that it will prevent situations in which smaller aircraft might otherwise be restricted from carrying handicapped persons; this benefit is unquantifiable.

International Trade Impact Statement

This rule is not anticipated to affect the import of foreign products or services into the United States or the export of U.S. products or services to foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. Based on the potential relief that the rule will provide and the criteria of implementing FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, the FAA has determined that the rule will not have a significant

economic impact on a substantial number of small entities.

Federalism Implications

The rule 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 (52 FR 41685; October 30, 1987), it is determined that this rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons previously addressed, the FAA has determined that this amendment involves a regulation which is not significant under Executive Order 12866 or the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For this same reason, it is certified under the criteria of the Regulatory Flexibility Act that the rule 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 amendment is so minimal that it does not warrant a full regulatory evaluation.

List of Subjects in 14 CFR Part 135

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

The Amendment

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

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

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

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g).

2. In § 135.129, paragraphs (a)(2) and (a)(3) are redesignated as paragraphs (a)(3) and (a)(4) and headings are added, paragraph (a)(1) is revised, and paragraph (a)(2) is added to read as follows:

§ 135.129 Exit seating.

(a)(1) *Applicability.* This section applies to all certificate holders operating under this part, except for on-demand operations with aircraft having 19 or fewer passenger seats and

commuter operations with aircraft having 9 or fewer passenger seats.

(2) *Duty to make determination of suitability.* 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. 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.

(3) *Persons designated to make determination.* * * *

(4) *Submission of designation for approval.* * * *

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Issued in Washington, DC, on June 21, 1994.

David R. Hinson,
Administrator.

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