

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 121 and 135**

[Docket No.: FAA-2007-26969; Amendment Nos. 121-331 and 135-109]

RIN 2120-AI99

Change in Extinguishing Agent Container Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; withdrawal.

SUMMARY: On April 20, 2007, the FAA published in the **Federal Register** a direct final rule entitled Change in Extinguishing Agent Container Requirements. The rule aligned the operational and certification requirements regarding airplane extinguishing agent containers or fire bottles; and it removed an obsolete section reference from part 135. This action withdraws the rule because the FAA received several adverse comments.

DATES: The direct final rule published at 72 FR 19793, April 20, 2007, is withdrawn effective May 31, 2007.

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SUPPLEMENTARY INFORMATION:**Background**

On April 20, 2007, the FAA published a direct final rule (Amendment Nos. 121-331 and 135-109, (72 FR 19793)). The rule, to have become effective June 4, 2007, was intended to correct a previous oversight that caused the certification and operational safety requirements regarding over-pressurization of airplane extinguishing agent containers to prevent bursting to be in conflict.

On March 17, 1977, the FAA published in the **Federal Register** a final rule¹ that amended 14 CFR 25.1199 to allow the discharge end of each discharge line from a pressure relief connection to be located so that the discharge of the fire extinguishing container (i.e., fire bottle) would not damage the airplane. In other words, the rule allows for the termination of the discharge line either inside or outside

the airplane as long as the discharge of the fire bottle would not damage the airplane. However, the corresponding operational requirements in § 121.267, and by reference in § 135.169, only allow for the termination of the fire bottle discharge line outside the airplane. As a result of this discrepancy, in a request dated July 5, 2006, Aeronautical Charters, Inc. submitted a petition for exemption² from § 121.267 for its airplane model (Citation 550) used in part 135 operations. Because the difference between the certification and operational requirements caused confusion and would likely result in more exemption requests, the FAA issued the Change in Extinguishing Agent Container Requirements direct final rule³ to align the certification and operational requirements.

In addition, the direct final rule removed an obsolete section reference from part 135. In a December 20, 1995 rulemaking,⁴ the FAA removed and reserved § 121.213, which contained special airworthiness requirements. We included those requirements in § 121.211 (Applicability). However, we inadvertently left a reference to § 121.213 in § 135.169(a). The direct final rule amended part 135 to remove the reference to § 121.213.

The comment period for the direct final rule closed on May 21, 2007.

Discussion of Comments

We received several adverse comments to the direct final rule from two commenters—Mr. Steve Donohue of ExpressJet, Inc. and Mr. Jason Ostbye of Sun Country Airlines.

Discharge Line Terminates Outside the Airplane (§ 121.267(a)(1))

Both commenters expressed concern about the wording of § 121.267(a) that reads: “The discharge line from the relief connection must be installed in a manner so it can be inspected from the ground.” The commenters said this part of the rule does not belong in paragraph (a) because paragraph (a) applies to both subparagraphs (a)(1) (which describes the process for inspection of the fire bottle when the discharge line terminates outside the airplane) and (a)(2) (which describes the process for inspection of the fire bottle when the discharge line terminates inside the airplane). The commenters said the discussion about inspection “from the

ground” should be placed in paragraph (a)(1).

We agree with the commenters that § 121.267(a) as worded is confusing since it implies that the statement about inspection “from the ground” applies to a discharge line that terminates either inside or outside the airplane. We intended for the following text to be placed in § 121.267(a)(1):

*The discharge line terminates outside the airplane. The discharge line from the relief connection must be installed in a manner so it can be inspected on the ground * * **

We intend to correct this oversight in a future rulemaking action.

Discharge Line Terminates Inside the Airplane (§ 121.267(a)(2))

Both commenters said § 121.267(a)(2) implies that all fire bottles have pressure indicators; however, many lavatory extinguishers, for example, do not have such indicators. Therefore, to comply with the rule, each lavatory extinguisher would need to be removed and weighed as part of each pre-departure check to ensure that it has not discharged. Mr. Ostbye said operators would incur significant costs as a result.

After further review, we believe the regulation as written may be misleading because it specifies inspection of pressure indicators but some fire bottles do not have such indicators. We intend to clarify this issue in a future rulemaking action.

Mr. Ostbye said the FAA should define the term “inside the airplane.” In support of this recommendation, he said the following: The discharge line of an engine fire bottle on a 737NG terminates in the main wheel well. The discharge line of the APU (auxiliary power unit) bottle discharges in the tail compartment. And, cargo fire bottles discharge in the lower lobe of the fuselage. Therefore, compliance with § 121.267(a)(2)⁵ would cause operators to incur significant costs because access and inspection of these fire bottles would require a mechanic with a ladder and the removal of cargo compartment panels.

Mr. Ostbye also said the rule should address use of bottle discharge lights in the cockpit in lieu of visually inspecting the bottle pressure indicator. He said if bottle discharge lights in the cockpit satisfy the requirement to visually inspect the pressure indicator, then the process of having a mechanic involved in the inspection and having to remove panels would not be necessary.

⁵ § 121.267(a)(2): As part of a pre-departure check, visually inspect the pressure indicator for the container for loss of pressure within the container.

² Docket FAA-2006-25325.

³ 72 FR 19793; April 20, 2007.

⁴ Commuter Operations and General Certification and Operations Requirements; Air Carrier and Commercial Operator Training Programs; Final Rules (60 FR 65832).

¹ Airworthiness Review Program—Amendment No. 4: Powerplant Amendments (42 FR 15034).

We do not agree that the term “inside the airplane” needs to be defined. As discussed in the preamble to the direct final rule, historically, fire extinguishing agents were corrosive materials that could degrade an airplane. As a result, earlier FAA regulations required any discharge for pressure relief to be outside the airplane. However, when industry developed non-corrosive extinguishing agents, the certification regulations were revised in the 1970s to allow for termination of the pressure relief discharge line in such a way as to not damage the airplane. The intent of § 121.267(a)(2) and (b) was to ensure that when a discharge line terminated inside the airplane, only a non-corrosive extinguishing agent was used so that discharge of the agent would not damage the airplane.

We do agree, however, that any future change to the regulation should take into account current industry practices and approved methods such as inspecting fire bottle discharge lights in the cockpit as a means to determine low pressure or discharge of an extinguishing agent container.

Reason for Withdrawal

As stated in 14 CFR 11.31(c), if the FAA receives an adverse comment to a direct final rule or a comment stating the intent to file such a comment, the FAA advises the public by publishing a notice in the **Federal Register**. The notice may withdraw the direct final rule in whole or in part.

After further review, and in consideration of the comments to the Change in Extinguishing Agent Container Requirements direct final rule, the FAA has determined that the

rule should be withdrawn in its entirety. This will allow us more time to further examine the issues the commenters raised and determine the course of action that best serves the public's interest.

Accordingly, the FAA withdraws Amendments Nos. 121–331 and 135–109, published at 72 FR 19793 on April 20, 2007. However, withdrawal of these Amendments does not preclude the FAA from issuing another rule on the subject matter in the future or committing the agency to any future course of action.

Issued in Washington, DC, on May 30, 2007.

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