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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 119, 121, 125, and 135

[Docket No. FAA-98-4458]

RIN 2120-AG35

Prohibition on the Transportation of Devices Designed as Chemical Oxygen Generators as Cargo in Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); withdrawal.

SUMMARY: The FAA is withdrawing proposed amendments regarding the transportation of devices designed as chemical oxygen generators, including ones that have been discharged and ones that are newly manufactured but not yet charged. Since the NPRM was issued, the FAA has determined that regulations adopted by the Research and Special Programs Administration (RSPA) alleviate the FAA's specific concerns that gave rise to the NPRM. In addition, the FAA is withdrawing a proposed amendment to require that unexpired chemical oxygen generators be placed in a central location in an accessible compartment and separated from other cargo in all-cargo operations. This proposed amendment is being withdrawn because the FAA and RSPA are evaluating the need for improved packaging for chemical oxygen generators, which would be proposed in an NPRM by RSPA and would satisfy the intent of the FAA's NPRM.

FOR FURTHER INFORMATION CONTACT: David L. Catey, Flight Standards Service, Air Transportation Division, AFS-200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8166.

SUPPLEMENTARY INFORMATION:

Background

After the May 11, 1996 crash of ValuJet Flight 592, the National Transportation Safety Board (NTSB) issued Recommendation A-96-29 on May 31, 1996, which stated that the Research and Special Programs Administration (RSPA) should, "in cooperation with the Federal Aviation Administration, permanently prohibit the transportation of chemical oxygen generators as cargo on board any passenger or cargo aircraft when the generators have passed their expiration dates, and the chemical core has not been depleted" and "prohibit the transportation of oxidizers and oxidizing materials...in cargo compartments that do not have fire or smoke detection systems."

Since that recommendation was issued, both RSPA and FAA have published several final rules that address the concerns raised by the NTSB. First, RSPA has prohibited the transportation of chemical oxygen generators as cargo on board passenger-carrying aircraft (61 FR 68952; Dec. 30, 1996). Second, in 1997, RSPA adopted a more specific shipping description for chemical oxygen generators to make it easier for air carriers to identify them and specified additional packaging requirements (62 FR 30767, June 5, 1997). RSPA's Hazardous Materials Regulations define a chemical oxygen generator as, "a device containing chemicals that upon activation release oxygen as a product of chemical reaction." In that rulemaking, RSPA also aligned its hazardous materials regulations with the provisions of the International Civil Aviation Organization's Technical Instructions on the Safe Transport of Dangerous Goods. Finally, in 1998, the FAA issued a final rule that upgraded the fire safety standards for

Class D cargo compartments for certain transport-category aircraft (63 FR 8033; Feb. 17, 1998).

On August 27, 1998, the FAA issued an NPRM entitled "Prohibition on the Transportation of Devices Designed as Chemical Oxygen Generators as Cargo in Aircraft" (63 FR 45912; Aug. 27, 1998), which was intended to supplement RSPA's rules and help eliminate human error. That NPRM proposed to amend 14 CFR parts 91, 119, 121, 125, and 135 to ban the transportation of devices designed to chemically generate oxygen. In the NPRM, the FAA proposed to create a definition for the terms "devices designed as chemical oxygen generators" and "chemical oxygen generator." The term "devices designed as chemical oxygen generators" would have been defined to include all chemical oxygen generators carried as cargo, even those that had been discharged, those past their expiration dates and newly manufactured devices designed as chemical oxygen generators but not yet charged with chemicals. The NPRM would not have applied to chemical oxygen generators that are installed to meet aircraft certification requirements or other FAA regulations. The proposal also contained another definition for the term "chemical oxygen generator" that would have been different from the term used in RSPA's hazardous materials regulations.

The FAA's NPRM also would have prohibited devices designed as chemical oxygen generators from being carried as cargo on passenger carrying operations. The carriage of devices designed as chemical oxygen generators would have been permitted on aircraft engaged in all-cargo operations only if they were located in an accessible cargo compartment that was equipped with a fire and smoke detection system, the cargo

was separated from other cargo, and was shipped in compliance with RSPA's hazardous materials regulations.

In 1999, RSPA addressed several of the FAA's concerns identified in its 1998 NPRM by publishing a final rule (64 FR 45388; Aug. 19, 1999) that prohibited the following on aircraft:

- Chemical oxidizers in inaccessible cargo compartments without fire or smoke detection and fire suppression systems;
- Personal-use chemical oxygen generators on passenger-carrying aircraft; and
- Spent chemical oxygen generators on passenger and cargo aircraft.

In addition to the August 1999 final rule, RSPA informed NTSB by letter (included in the public docket for this rulemaking) that its June 5, 1997 final rule prohibited the transportation of chemical oxygen generators as cargo on passenger-carrying aircraft, regardless of whether they have passed their expiration dates.

RSPA's final rule did not prohibit the transportation of newly manufactured devices not yet charged for the generation of oxygen. The FAA's 1998 NPRM, on the other hand, did contain such a proposal. The FAA, however, has decided not to adopt that prohibition because, as discussed below, it has determined that the proposed amendment is not necessary.

Discussion of Comments

The FAA received 14 comments. One comment was from the National Transportation Safety Board, and one from a group of individuals outside the aviation industry. Commenters from the aviation-related organizations included the following—

Regional Airline Association (RAA)
Air Transport Association (ATA)
Conference on Safe Transportation of Hazardous Articles, Inc. (COSTHA)
Air Line Pilots Association, International (ALPA)
International Air Transport Association (IATA)
British Airways
Drager Aerospace North America
Aviosupport, Inc.
Teamsters Airline Division
American Trans Air, Inc.
Boeing
Independent Pilots Association (IPA)

The comment from the group of non-industry individuals supported the proposal. Other commenters, however, either wanted the proposal withdrawn completely or turned over to RSPA for action, or they objected to various details of the NPRM. Several of these objections concerned matters that have since been disposed of by RSPA in its final regulation. Major points are discussed below.

Comment: ATA, Aviosupport, Inc., Boeing, and RAA stated that newly manufactured, never-been-charged containers are not hazardous materials and therefore should not be regulated. Aviosupport also stated that, to their knowledge, manufacturers charge oxygen generators as part of the assembly process and do not ship them empty.

FAA Response: After discussing the issue with RSPA, the FAA agrees that it is not necessary to regulate newly manufactured, never-been-charged devices. RSPA agrees with the Aviosupport comment that generators are not shipped empty to be charged elsewhere, and the FAA did not receive any rebuttal comments indicating otherwise and does not have any information to the contrary. Although the FAA's original goal was to reduce the risk of human error in a situation in which charged generators were improperly offered as never-been-filled, the FAA is satisfied that newly

manufactured, never-been-charged devices will not be transported by aircraft. The FAA is therefore withdrawing the proposal.

Comment: ATA, RAA, ALPA, American Trans Air, Inc. COSTHA, and IATA wanted the NPRM to be withdrawn or referred to RSPA for action because it would overlap RSPA's regulations and go against the provisions in Executive Order 12866 regarding duplicative regulations.

FAA Response: The FAA agrees. RSPA addressed many of the FAA's concerns in its August 19, 1999, final rule, and the FAA has decided that it is not necessary to regulate newly manufactured, never-been-charged devices (as discussed in the response above). The FAA remains concerned about the possibility that chemical oxygen generators could fuel a fire that started in a cargo compartment. However, FAA believes that this issue can be resolved through improved packaging for these devices and is working with RSPA to address this concern.

Comment: IATA and Teamsters do not believe that the FAA defined "separation" of chemical oxygen generators from other cargo adequately.

FAA Response: The FAA agrees that its use of the term "separation" was not well defined. The FAA's proposed use of the term "separation" was not consistent with RSPA's use of the word. Given that RSPA already uses the term and specifies how to separate the material, the FAA recognizes that its separation proposal was confusing. The FAA's separation proposal was designed to preclude, as much as possible, the placement of chemical oxygen generators (and devices designed as chemical oxygen generators) close to other cargo. The proposal was intended to prevent those devices from being enveloped in a fire

generated in other cargo and, upon ignition of the chemical reaction for producing oxygen, feeding an uncontrollable fire.

Since the NPRM was published, the FAA has reconsidered the proposed amendment. The FAA still believes that separating all chemical oxygen generators, as currently packaged, from potential sources of ignition is critical to reducing the risk of a catastrophic fire on an aircraft. The FAA has determined, however, that this separation is not necessary if chemical oxygen generators are placed in outer packaging that satisfies the FAA's testing criteria for materials to meet flame penetration resistance and thermal protection standards. RSPA is currently working with the FAA to develop a proposed rule that would require this kind of packaging, so the FAA's proposed rule that would require separation is not needed at this time.

Comment: ALPA and Aviosupport, Inc. point out that in the justification of the NPRM, the FAA cited safety concerns arising from improperly shipped chemical oxygen generators, and that better training in hazardous materials recognition is the better solution.

FAA Response: The FAA recognizes that training is an important aspect to reducing the amount of improperly shipped hazardous materials. The FAA currently is developing a separate NPRM that would improve training standards for air carriers, repair stations, and their contract employees.

Comment: ALPA points out that the FAA used a different definition of "chemical oxygen generator" than RSPA's definition.

FAA Response: The FAA agrees. Since there is no longer a need for a different definition, the FAA is withdrawing this proposal.

Comment: ALPA and Teamsters state that one member of a two-person crew on an all-cargo operation is not likely to leave the flight deck to enter a cargo compartment to put out a fire alone.

FAA Response: The FAA did not intend to require that members of two-person cargo crews fight fires. Rather, the operator's procedures would indicate whether fighting fires is within the scope of crewmembers' duties.

Conclusion

The FAA has determined that regulatory action is no longer necessary and, therefore, withdraws the NPRM entitled "Prohibition on the Transportation of Devices Designed as Chemical Oxygen Generators as Cargo in Aircraft" published on August 27, 1998 (63 FR 45912; Aug. 27, 1998).

Withdrawal of this NPRM does not preclude the FAA from issuing another notice on the subject in the future or from committing to any future action.

Issued in Washington, DC on December 5, 2002.

Certified to be a True Copy
Vanessa Wilkins

Louis C. Cusimano
Acting Director, Flight Standards Service