

[Docket No. 16389; Special Federal Aviation Reg. No. 33]

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

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

**Flight Recorders and Cockpit Voice Recorders**

The purpose of this Special Federal Aviation Regulation is to permit, temporarily, certain large airplanes having a maximum passenger capacity of 30 seats or less, a maximum payload capacity of 7,500 pounds or less, and a maximum zero fuel weight of 35,000 pounds or less, to be operated under Parts 121 and 135 of the Federal Aviation Regulations without a flight recorder or a cockpit voice recorder. Certain airplanes are excluded as discussed herein.

Section 121.343 requires that no person may operate a large airplane that is certificated for operations above 25,000 feet altitude or is turbine engine powered, unless it is equipped with one or more flight recorders that meet the specifications set forth in Part 121. Section 121.359 requires that no person may operate a large turbine engine powered airplane or a large pressurized airplane with four reciprocating engines without an approved cockpit voice recorder. The requirements of §§ 121.343 and 121.359 apply to Part 135 certificate holders by virtue of § 135.2 which requires air taxi operators to comply with the certification and operations requirements of Part 121 applicable to supplemental air carriers for operations conducted with large aircraft. On the other hand, § 121.9 permits Part 121 certificate holders to comply with the requirements of Part 135 applicable to air taxi operators for operations conducted in small aircraft. A large aircraft is defined in § 1.1 as an aircraft of more than 12,500 pounds maximum certificated takeoff weight and a small aircraft as one of 12,500 pounds or less maximum certificated takeoff weight.

The use of the "12,500 pound" aircraft standard for purposes of operations under Parts 121 and 135 has been ques-

tioned and, based upon a preliminary review, the FAA believes that requiring an aircraft to be operated under the rules of Part 121 or 135 based on whether its maximum certificated takeoff weight is more or less than 12,500 pounds may no longer be appropriate or necessary in the interest of safety. Accordingly, the FAA has under consideration the development of new standards for operations conducted with large airplanes having a maximum passenger capacity of 30 seats or less, a maximum payload capacity of 7,500 pounds or less, and a maximum zero fuel weight of 35,000 pounds or less. The development of new standards will be accomplished in the Part 135 Regulatory Review Program, public notice of which was published on September 13, 1976 (Notice No. 76-18, 41 FR 38778). A review conference, held in Denver, Colorado, during the period of November 8-11, 1976, was attended by approximately 400 persons. With the review conference having been completed, a notice of proposed rule making will be issued as soon as practicable with a 90-day comment period.

During the review conference, more than 100 proposals were discussed and the FAA pointed out that certain of the proposals might result in rule making which would delete the requirements for a flight recorder and cockpit voice recorder on large airplanes (excluding the Convair 240, 340, and 440; the Martin 202 and 404; the F-27 and FH-227; and the Hawker Siddeley 748) having a maximum passenger capacity of 30 seats or less, a maximum payload capacity of 7,500 pounds or less, and a maximum zero fuel weight of 35,000 pounds or less, operating under the rules of Part 135, as those rules may be revised in the Part 135 Regulatory Review Program. Various attendees commented on the flight recorder (FDR) and cockpit voice recorder (CVR). In summary, the comments noted that the FDR and CVR do not enhance the safety of a particular flight, but are useful only for accident investigation purposes. It was also stated that significant expense is incurred in the acquisition and maintenance of the FDR and CVR and that the weight of the equipment imposes a payload penalty on the operator. The general consensus of the persons commenting on the FDR and CVR was that the economic detriment resulting from the FDR and CVR requirements on airplanes of the size specified in the Part 135 Regulatory Review Program is significant. Concern also was expressed that continuation of these requirements during the process of rule making which might result in deletion of the requirements could cause needless expense to be incurred by air taxi operators. Several certificate holders have advised the FAA that they expect to acquire, imminently, large airplanes within the size specified herein which do not have an approved FDR or CVR installed. These certificate holders have stated that unless immediate relief from the FDR and CVR requirements is granted, they will be required to incur significant expenses.

It also is noted that the following pending petitions for exemption seek permission to operate certain large airplanes without a flight recorder or cockpit voice recorder: Usair Corporation, dated 5/30/75 (Docket 14716); World Aviation Services, dated 6/10/75 (Docket 14771); Thunderbird Airways, Inc., dated 7/28/75 (Docket 15056); Jet Fleet Corporation, dated 6/3/76 (Docket 15852); and Boise Cascade Aviation Division, dated 10/12/76 (Docket 15254). In addition, Lacy Aviation, Inc. (petition for exemption dated 4/25/75, Docket 14700), DeBoer Aviation Corporation (petition for exemption dated 5/6/75, Docket 14699), and American Jet Aviation (petition for rule making dated 2/27/75, Docket 14472) have requested relief including permission to operate certain large airplanes without a flight recorder or cockpit voice recorder.

Representatives of the National Transportation Safety Board (NTSB) were in attendance throughout the conference. At the close of the conference a representative of the NTSB stated that the Board was unable to comment at that time on the discussions of the FDR and CVR which took place at the conference.

In view of the foregoing, the FAA is concerned that an adverse economic impact may result from continuation of the FDR or CVR requirements for airplanes specified herein in view of the possibility that the FDR and CVR may not be required by rules developed in the Part 135 Regulatory Review Program. The FAA has considered the accident investigation usefulness of the FDR and CVR in relation to the possible adverse economic impact described above and has concluded that safety and the public interest do not require the installation of the flight recorder or cockpit voice recorder in the airplanes specified herein pending the development of new standards for operations conducted with those airplanes.

Therefore, this SFAR is adopted to permit, during this period, airplanes type certificated as large airplanes, having a maximum passenger capacity of 30 seats or less, a maximum payload capacity of 7,500 pounds or less, and a maximum zero fuel weight of 35,000 pounds or less to be operated under Parts 121 and 135 of the Federal Aviation Regulations without complying with the requirements for a flight recorder or a cockpit voice recorder. The SFAR does not apply to the Convair 240, 340, and 440; the Martin 202 and 404; the Fairchild F-27 and FH-227; or the Hawker Siddeley 748. Also, the SFAR does not apply to any airplane described in paragraph (a) of section 1 which, as of the effective date of the SFAR, is listed on the operations specifications of Part 121 or Part 135 certificate holders for operation as large airplanes and has an approved flight recorder and cockpit voice recorder installed.

Since this special regulation would avoid the probable imposition of an undue economic burden on certain certificate holders, would relieve a restriction and would not adversely affect safety, I find that notice and public proce-

ture are impracticable and that for good cause it may be made effective on less than 30 days notice. However, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this SFAR. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, SW., Washington, D.C. 20591. All communications received on or before January 31, 1977, will be considered by the Administrator and this SFAR may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

It should be noted that in Notice 76-29, issued on December 22, 1976, the FAA requests comments on a proposal to amend this SFAR and extend its relief to those airplanes currently excluded by paragraph (b) (2) of section 1.

(Secs. 313(a), 601, and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1424), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655 (c)).)

In consideration of the foregoing, the following Special Federal Aviation Regulation is adopted, effective December 22, 1976:

**SPECIAL FEDERAL AVIATION REGULATION No. 33**

1. *Applicability.* Contrary provisions of Parts 121 and 135 of the Federal Aviation Regulations notwithstanding, large airplanes described in paragraph (a) of this regulation may be operated under Parts 121 and 135 of the Federal Aviation Regulations without a flight recorder or a cockpit voice recorder:

(a) Except as provided in paragraph (b) of this section, airplanes type certificated as large airplanes, having a maximum passenger capacity of 30 seats or less, a maximum payload capacity of 7,500 pounds or less, and a maximum zero fuel weight of 35,000 pounds or less.

(b) This regulation does not apply to the following airplanes:

(1) Convair 240, 840, and 440; Martin 202 and 404; Fairchild F-27 and FH-227; Hawker Siddeley 748; and

(2) Any airplane described in paragraph (a) of this section that on the effective date of this SFAR is listed on the operations specifications of a Part 121 or Part 135 certificate holder for operation as a large airplane and has an approved flight recorder and cockpit voice recorder installed.

2. *Definitions.* For purposes of this Special Federal Aviation Regulation, the following definitions apply:

(a) Except as provided in paragraph (b) of this section, the term "maximum payload capacity" means the maximum certificated takeoff weight of an airplane, less the empty weight, less all justifiable airplane equipment, and less the operating load (consisting of minimum fuel load, oil, flight crew, steward's supplies, etc.). The allowance for the weight of the crew, oil, and fuel is as follows:

(1) Crew—200 pounds per crew member required under the Federal Aviation Regulations.

(2) Oil—350 pounds.

(3) Fuel—the minimum weight of fuel required by the Federal Aviation Regulations for a flight between domestic points 174 nautical miles apart under VFR weather conditions and not involving extended over-water operations.

(b) In the case of an airplane for which a maximum zero fuel weight is prescribed in FAA technical specifications, maximum payload capacity means the maximum zero fuel weight, less the empty weight, less all justifiable airplane equipment, and less the operating load (consisting of minimum flight crew, steward's supplies, etc., but not including disposable fuel or oil).

(c) The term "empty weight" means the weight of the airframe, engines, propellers, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

(d) The term "maximum zero fuel weight" means the maximum permissible weight of an airplane with no disposable fuel or oil. The zero fuel weight figure may be found in either the airplane type certificate data sheet or the approved airplane flight manual or both.

This Special Federal Aviation Regulation terminates June 30, 1978, unless sooner superseded or rescinded.

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

Issued in Washington, D.C., on December 22, 1976.

JOHN L. McLUCAS,  
*Administrator.*

[FR Doc. 76-38228 Filed 12-29-76; 8:45 am]