

14 CFR Parts 121, 127, and 135

[Docket No. 20298; Amdt. Nos. 121-165; 127-41; and 135-8]

Operations of Foreign-Registered Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments allow U.S. air carriers to operate foreign-registered aircraft, subject to certain conditions and limitations, in foreign air transportation and between points within the United States. They implement the "International Air Transportation Competition Act of 1979" (Pub. L. 96-192) which, among other things, amended section 1108(b) of the Federal Aviation Act of 1958 to allow U.S. air carriers to engage in otherwise authorized common carriage and carriage of mail with foreign-registered aircraft under lease or charter to them without crew. These amendments make available to U.S. air carriers, including air taxi and commuter air carriers, a new source for aircraft and for equipment financing and will assist those carriers in achieving increased operational efficiency.

EFFECTIVE DATE: October 16, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Eli S. Newberger, Regulatory Projects Branch (AVS-24), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 755-8716.

SUPPLEMENTARY INFORMATION:

History

This final rule is based on Notice of Proposed Rule Making No. 80-8, published in the *Federal Register* on May 1, 1980 (45 FR 20964). All interested persons have been given to all matters presented.

Background

Notice 80-8 was issued to provide the basis for implementation of an important amendment to section 1108(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1508(b)) (the FA Act) contained in the International Air Transportation Competition Act of 1979" (Pub. L. 96-192) which became effective February 15, 1980. That amendment to the third sentence of section 1108(b) permitted the Administrator to issue regulations

"authorizing United States air carriers to engage in otherwise authorized common carriage and carriage of mail with foreign-registered aircraft under lease or charter to them without crew." Prior to the amendment, section 1108(b) of the FA Act prohibited foreign-registered aircraft from taking on, at any point within the United States, persons, property, or mail carried for compensation or hire and destined for another point within the United States. The statutory amendment is important because it provides the basis for availability to United States air carriers of a new source of aircraft which may be utilized under a wide variety of circumstances. This point will be discussed further under the heading "Benefits".

Notice 80-8 proposed changes to §§ 121.153, 127.71, and 135.25 of the Federal Aviation Regulations (FAR) to implement the statutory amendment. One aspect of the notice was the deletion from §§ 121.153 and 135.25 of prohibitions on the use of any aircraft not registered as a civil aircraft of the United States. In addition to implementing section 1108(b) as it existed prior to February 15, 1980, those prohibitions also prohibited carriage by U.S. carriers in other than U.S.-registered aircraft between a point in the United States and a point outside the United States, and between points outside the United States. Although Part 127 did not contain an explicit prohibition on the use of foreign-registered aircraft, the effect of section 1108(b) of the FA Act prior to February 15, 1980, was to prohibit use of those aircraft in air commerce within the

United States. The second aspect of the notice was the addition to §§ 121.153, 127.71, and 135.25 of provisions permitting a Part 121, 127, or 135 certificate holder to operate in common carriage, and for the carriage of mail, a civil aircraft which is leased or chartered to the certificate holder without crew and is registered in a country which is a party to the Convention on International Civil Aviation (Chicago Convention). Four basic requirements were proposed as conditions precedent to the operation of a foreign-registered aircraft as follows:

(1) The aircraft must carry an appropriate airworthiness certificate issued by the country of registration and must meet the registration and identification requirements of that country.

(2) The aircraft must comply with all the requirements of the Federal Aviation

Regulations which could be applicable if the aircraft were U.S.-registered instead of foreign-registered.

(3) The certificate holder must file a copy of the lease or charter agreement with the FAA.

(4) The aircraft must be operated by airmen employed by the certificate holder.

Discussion of Comments

The FAA received 11 comments in response to Notice 80-8. These comments represent the views of individuals, labor organizations, foreign governments, airline organizations, and other government agencies. Six commenters highly favor the proposal, four submitted comments and recommendations, and one opposes the proposal.

The commenter opposing the proposal contends that the leasing of these aircraft erodes the U.S. work force by allowing the foreign lessor to maintain the aircraft. The FAA does not agree. The rule permits an air carrier to use a foreign-registered aircraft. The maintenance, preventive maintenance, and inspection requirements for the foreign-registered aircraft are the same as those required for a U.S.-registered aircraft. The U.S. air carrier must conduct the operation and maintenance of the foreign-registered aircraft in accordance with its currently approved FAA operations specifications. This commenter is also concerned that there will be a deterioration in the safety level. This concern is not justified. The foreign-registered aircraft will be of a design approved by the FAA, and will be manufactured, maintained, and operated under the same standards as a U.S.-registered aircraft. Finally, this commenter requested that the rule

making be deferred and a public hearing be held. The FAA does not agree that this is necessary. These amendments require a level of safety which is equivalent to that required for U.S.-registered aircraft. The commenter has not made any showing justifying delay of these amendments or why a public hearing should be held.

Several commenters are concerned about the accomplishment of airworthiness directives, service bulletins, service letters, service difficulty reporting, maintenance schedules, maintenance procedures, mechanic certification, and the overall airworthiness of an aircraft that was maintained by a foreign operator. The FAA requires air carriers to show compliance with the operating and

airworthiness rules before issuing operations specifications authorizing the aircraft's operation. These amendments require the certificate holder to maintain the foreign-registered aircraft to standards equivalent to those for U.S.-registered aircraft. Therefore, there will not be any significant difference between the airworthiness of a foreign-registered aircraft and a U.S.-registered aircraft operated by a U.S. air carrier.

One commenter states it is unclear why it may be necessary for a pilot to obtain a foreign airman certificate. If imposed by the country of registry, this requirement would parallel the U.S. regulation that requires a foreign airman operating a U.S.-registered aircraft to hold a current U.S. pilot certificate when operating the U.S.-registered aircraft. This requirement conforms with the obligation imposed on the country of registry by the Chicago Convention.

One commenter states the FAA should make a predetermination that the minimum airworthiness requirements of the foreign country of registry meet the minimum U.S. airworthiness requirements. The FAA does not agree that this is necessary or advisable. It is the air carrier's responsibility to provide to the FAA the documentation and records necessary to determine type certification conformity. The FAA will then make the necessary inspections and/or reviews needed to determine the aircraft's compliance status prior to authorizing the aircraft's use in U.S. air carrier operations. In some cases, the operator may be required to make alterations or obtain exemptions from state of registry requirements in order to operate the aircraft in U.S. air carrier operations.

One commenter proposes a change to allow the certificate holder to contract for airmen as well as the aircraft as long as they are under the exclusive direction and control of the lessee certificate

holder. The FAA does not agree. This suggested change would allow wet lease agreements which are contrary to the provision in the statute which limits this rule making to a lease or charter agreement without crew.

Several foreign airworthiness authorities commented on the various rules, conditions, and limitations contained in their respective regulations concerning the operation and airworthiness of aircraft registered and maintained in their respective States. Their concern is whether the country of registry or the FAA is responsible for surveillance of the aircraft. Since the aircraft is treated as a U.S.-registered aircraft in all respects, while being

operated by a U.S. air carrier, the FAA will conduct such surveillance as necessary to ensure compliance with the FAR no matter where the aircraft is operated. The certificate holder is responsible for making arrangements with the country of registry to satisfy that country's requirements, including any special documentation required by that country to be carried on the aircraft. It may be necessary for the lessee or lessor to obtain exemptions or concessions from the foreign airworthiness authority who has jurisdiction over the registration of the aircraft. In any case, the FAA will require documentation or conduct physical inspections to ensure compliance with all applicable requirements in the FAR.

One commenter suggests the FAR should provide for the FAA to accept alternate procedures to those laid down in the FAR if the FAA finds that the procedures of the country of registry provide an equivalent level of safety. It is inappropriate to include such provisions in a general rule making of this nature. Findings of equivalency, if appropriate, are best left for determination in specific cases. The FAA encourages parties to consult with the FAA with a view toward an exemption if there is an appropriate set of circumstances that seem to lend themselves to an exemption.

Another commenter cites a number of hypothetical difficulties that could arise as a result of these leases. The FAA contemplates that any difficulties encountered are best addressed by consultation between the governments involved in specific cases and are inappropriate for resolution in a general rule. The FAA notes that just such a procedure was followed in the case of the Concorde interchange between Braniff and British Airways/Air France.

One commenter questions why the aircraft must meet U.S. type certificate requirements. One of the requirements

in the present regulations for air carriers is that an aircraft must have a current airworthiness certificate issued under Chapter 1 of 14 CFR. In order to have a current U.S. airworthiness certificate, the aircraft must comply with U.S. type certificate requirements. This standard is maintained in this rule to ensure that the aircraft is of a design approved by the FAA.

One commenter is concerned as to who can perform maintenance when the aircraft is operated by the certificate holder for a lease or charter operation. The FAA requires that maintenance must be performed by another U.S. certificate holder and those authorized

by Parts 43 and 145 of the FAR.

Overall, the FAA recognizes that it has maintained a purposefully high safety standard; however, at the same time the FAA recognizes that we are dealing with cases of first impression. The FAA welcomes the opportunity to deal with individual proposals on a case-by-case basis with a view toward seeing that the Congressional intent is fully carried out.

Benefits

The new law and these amendments enhance the ability of the industry to increase aircraft utilization and to obtain aircraft financing from other than U.S. sources. It should open up a previously virtually untapped source of aircraft equipment for the broad spectrum of air carriers ranging from the very large trunk carrier to the smallest commuter or air taxi air carrier. For example, aircraft purchased by foreign owners from U.S. manufacturers can be leased to U.S. carriers for relatively long periods of time. As another example, a U.S. air carrier could lease a foreign-registered aircraft during its peak season and return the aircraft for the foreign air carrier's peak season. As still another example, the statute and these rules should encourage and facilitate interchange lease arrangements in which an authorized foreign air carrier would operate an aircraft to an interchange point at which the U.S. air carrier would take operational control for operation over its routes. Commuter air carriers should find this amendment especially beneficial in obtaining aircraft for use in providing essential air service to small communities.

Description of the Amendments

To implement Pub. L. 96-192, §§ 121.153, 127.71, and 135.25 of the FAR are amended to allow a U.S. air carrier to operate, in common carriage and for the carriage of mail, a civil aircraft which is leased or chartered to it without crew and is registered in a

foreign country which is a party to the Chicago Convention. There are four specific requirements which must be met under each of the sections specified above.

First, the aircraft is required to carry an appropriate airworthiness certificate issued by the country of registration and meet the registration and identification requirements of that country. This is necessary to comply with the Chicago Convention.

Second, the aircraft is required to comply with all the requirements in the FAR that would be applicable if the

aircraft were registered in the United States. This includes all the requirements which must be met for the issuance of a U.S. standard airworthiness certificate, although a U.S. standard airworthiness certificate will not be issued for the aircraft. The foreign-registered aircraft and its operation must comply in all respects with the FAR as if it were a U.S.-registered aircraft operated by the air carrier. This ensures that there is no reduction in the level of safety currently provided by U.S. air carriers. The aircraft type design must be approved under a U.S. type certificate and the particular aircraft involved must meet the requirements for a U.S. standard airworthiness certificate, except the requirement for a U.S. registration certificate. With respect to the aircraft being approved under a U.S. type certificate, the proposal has been editorially revised in this final rule by the addition of the clause "is of a type design which is approved under a U.S. type certificate" immediately following the second word "aircraft" in §§ 121.153(c)(2), 127.71(b)(2), and 135.25(d)(2). This change uses more technically correct language and is not a substantive difference from the discussion of the proposal which said that the aircraft type design must be type certificated by the FAA. This means the aircraft must conform to the FAA type certificate and be in a condition for safe operation, including compliance with all effective U.S. and foreign airworthiness directives, maintenance, and life-limited parts requirements. Certification and maintenance rules, operating and equipment rules, and pilot certification, qualification, checking, training, and competency rules applicable to the operation of a U.S.-registered aircraft of the same type also would apply. However, the foreign-registered aircraft is not eligible for, nor would it receive, a U.S. standard airworthiness certificate or be registered in the United States. In addition to the requirement to hold a

U.S. airman certificate, it may be necessary for the airman to hold an appropriate foreign airman certificate.

It is implicit in the amendments to §§ 121.153, 127.71, and 135.25 that the foreign-registered aircraft must comply with the noise and engine emissions provisions of the FAR to the same extent that a U.S.-registered aircraft is required to comply for the operations conducted. For example, compliance must be shown with the requirements of the "new production" (§ 36.1(d)) and "acoustical change" (§ 36.7) rules and the operating

noise limits rule in Subpart E of Part 91 as if the aircraft were (or would be) certificated and registered in the United States. Thus, a U.S. air carrier operating a foreign-registered aircraft must include that aircraft in the compliance plan/status report submitted to the FAA under § 91.308. In addition, if the FAA adopts or amends any other noise or engine emissions requirements applicable to U.S.-registered aircraft, those requirements would apply to foreign-registered aircraft operated by U.S. air carriers under any rules adopted as a result of this rule.

Third, to enable the FAA to have a listing of all foreign-registered aircraft operated by U.S. air carriers, the certificate holder must file a copy of the lease or charter agreement with the FAA Aircraft Registry at Oklahoma City.

Finally, these amendments provide that the aircraft must be operated by airmen employed by the certificate holder. This is consistent with the requirement in Pub. L. 96-192 that the lease or charter be without crew.

Immediate Adoption

Since these amendments are needed to implement a statute, and are relaxatory, I find that good cause exists for making them effective in less than 30 days.

Adoption of the Amendments

Accordingly, Parts 121, 127, and 135) are amended as follows, effective October 16, 1980.

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

1. By revising § 121.153(a) and adding a new paragraph (c) to read as follows:

§ 121.153 Aircraft requirements: general.

(a) Except as provided in paragraph (c) of this section, no certificate holder may operate an aircraft unless that aircraft—

* * * * *

(c) A certificate holder may operate in common carriage, and for the carriage of mail, a civil aircraft which is leased or chartered to it without crew and is registered in a country which is a party to the Convention on International Civil Aviation if—

(1) The aircraft carries an appropriate airworthiness certificate issued by the country of registration and meets the registration and identification requirements of that country;

(2) The aircraft is of a type design which is approved under a U.S. type

certificate and complies with all of the requirements of this chapter (14 CFR Chapter 1) that would be applicable to that aircraft were it registered in the United States, including the requirements which must be met for issuance of a U.S. standard airworthiness certificate (including type design conformity, condition for safe operation, and the noise, fuel venting, and engine emission requirements of this chapter), except that a U.S. registration certificate and a U.S. standard airworthiness certificate will not be issued for the aircraft;

(3) The aircraft is operated by U.S.-certificated airmen employed by the certificate holder; and

(4) The certificate holder files a copy of the aircraft lease or charter agreement with the FAA Aircraft Registry, Department of Transportation, 6400 South MacArthur Boulevard, Oklahoma City, Oklahoma (Mailing address: P.O. Box 25504, Oklahoma City, Oklahoma 73125).

PART 127—CERTIFICATION AND OPERATIONS OF SCHEDULED AIR CARRIERS WITH HELICOPTERS

2. By amending § 127.71 by redesignating the present paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 127.71 General.

(a) * * *

(b) An air carrier may operate in common carriage, and for the carriage of mail, a civil helicopter which is leased or chartered to it without crew and is registered in a country which is a party to the Convention on International Civil Aviation if—

(1) The helicopter carries an appropriate airworthiness certificate issued by the country of registration and meets the registration and identification requirements of that country;

(2) The helicopter is of a type design which is approved under a U.S. type certificate and complies with all of the requirements of this chapter (14 CFR Chapter 1) that would be applicable to

that helicopter were it registered in the United States, including the requirements which must be met for issuance of a U.S. standard airworthiness certificate (including type design conformity, condition for safe operation, and the noise, fuel venting, and engine emission requirements of this chapter), except that a U.S. registration certificate and a U.S. standard airworthiness certificate will not be issued for the helicopter;

(3) The helicopter is operated by U.S.-

certificated airmen employed by the air carrier; and

(4) The air carrier files a copy of the helicopter lease or charter agreement with the FAA Aircraft Registry, Department of Transportation, 6400 South MacArthur Boulevard, Oklahoma City, Oklahoma (Mailing address: P.O. Box 25504, Oklahoma City, Oklahoma 73125).

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

3. By revising §135.25(a) and adding a new paragraph (d) to read as follows:

§ 135.25 Aircraft requirements.

(a) Except as provided in paragraph (d) of this section, no certificate holder may operate an aircraft under this part unless that aircraft—

* * * * *

(d) A certificate holder may operate in common carriage, and for the carriage of mail, a civil aircraft which is leased or chartered to it without crew and is registered in a country which is a party to the Convention on International Civil Aviation if—

(1) The aircraft carries an appropriate airworthiness certificate issued by the country of registration and meets the registration and identification requirements of that country;

(2) The aircraft is of a type design which is approved under a U.S. type certificate and complies with all of the requirements of this chapter (14 CFR Chapter 1) that would be applicable to that aircraft were it registered in the United States, including the requirements which must be met for issuance of a U.S. standard airworthiness certificate (including type design conformity, condition for safe operation, and the noise, fuel venting, and engine emission requirements of this chapter), except that a U.S. registration certificate and a U.S. standard airworthiness certificate will not be issued for the aircraft;

(3) The aircraft is operated by U.S.-certificated airmen employed by the certificate holder; and

(4) The certificate holder files a copy of the aircraft lease or charter agreement with the FAA Aircraft Registry, Department of Transportation, 6400 South MacArthur Boulevard, Oklahoma City, Oklahoma (Mailing address: P.O. Box 25504, Oklahoma City, Oklahoma 73125).

(Sections 313(a) 601, 603, 604, 610(b), 611, and 1108(b), Federal Aviation Act of 1958 (49 U.S.C. §§ 1354(a), 1421, 1423, 1424, 1430(b), 1431, and 1508(b)); Section 6(c), Department of Transportation Act (49 U.S.C. § 1655(c)))

Note.—The FAA has determined that this

document involves a regulation which is not considered to be significant under Executive Order 12044 as implemented by the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 28, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by writing to the individual listed above as the information contact.

Issued in Washington, D.C., on October 13, 1980.

Langhorne Bond,

Administrator.

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