DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 20784; Amendment No. 121-173]

Exclusive-Use Requirements; Supplemental Air Carriers and Commercial Operators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment deletes the provision in § 121.155 of the Federal Aviation Regulations that a supplemental air carrier or commercial operator may not use any aircraft that it does not have sole possession, control, and use of for flight for at least 6 months. This updating of the Federal Aviation Regulations eliminates, without any derogation in safety, an unnecessary economic burden which the present rule imposes on this segment of aviation.

EFFECTIVE DATE: July 9, 1981.

FOR FURTHER INFORMATION CONTACT: Raymond E. Ramakis, 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:

Background

This amendment is based on Notice of Proposed Rulemaking No. 81-2 (46 FR 9868; January 29, 1981) and the petition of the Executive Air Fleet Corporation. All interested persons have been given an opportunity to participate in the making of this amendment and due consideration has been given to all matters presented.

Section 121.155(a) of the Federal Aviation Regulations (FAR) states: "No supplemental air carrier or commercial operator may use any aircraft unless—(1) It has exclusive use of the aircraft; (2) The aircraft is listed in its operations specifications; and (3) The aircraft is not listed in the operations specifications of any other air carrier or commercial operator." Exclusive use is defined in § 121.155(d), which states that "a supplemental air carrier or commercial operator has exclusive use of an aircraft if it has the sole possession, control, and use of it for flight, as owner, or has a written agreement (including arrangements for the performance of required maintenance) giving it that possession, control, and use for at least six months."

The regulations applicable to supplemental air carriers and commercial operators are unique in this respect. The regulations applicable to domestic and flag air carriers do not require exclusive use of an aircraft and the regulations applicable to commuter air carriers and air taxi operators only require the exclusive use of one aircraft with no minimum time limit on the use. Although there may have been a need for the exclusive-use requirement at the time it was adopted, there does not appear to be any justification for continuing to apply the restriction to the supplemental air carriers and commercial operators presently operating under these regulations.

In addition, § 121.45(b)(2) still requires that supplemental air carriers and commercial operators' operations specifications contain the types and registration numbers of aircraft authorized for use.

Exemptions from the exclusive-use requirements have been granted to the Executive Air Fleet Corporation (EAF) to allow the owners of the aircraft which EAF leases to continue their personal use of their aircraft under Part 91 of the regulations provided the owner has operational control of the aircraft during such use. During the period of owner use, EAF is responsible for the maintenance of the aircraft in accordance with EAF's maintenance program. These exemptions from the exclusive-use requirement in § 121.155 have continued for a number of years without any adverse effect on safety.

The exclusive-use requirements impose an economic burden on this segment of the aviation industry that cannot be justified on safety grounds. As such, the limitation is contrary to the mandate of Executive Order 12291 to eliminate to the greatest extent possible the economic penalties imposed by Federal regulations.

This amendment also responds to the petition for rulemaking filed by Executive Air Fleet Corporation on September 15, 1980. This petition requested the FAA to amend § 121.155 to except from the exclusive-use requirement aircraft which are used by a commercial operator engaged in providing aircraft management services. The exception would be limited to lease agreements that provide that the commercial operator maintain the aircraft at all times under its maintenance program, but that the owner may continue his/her personal use of the aircraft. During such times of personal use, the aircraft would be operated under Part 91 of the regulations. While the petition for rulemaking proposed only a limited exception to the present rule, the FAA is revoking the rule since it is no longer justified.

Discussion of Comments

Four public comments were received in response to Notice 81-2, all in favor of the proposal. No substantive comments were received and there were no written objections. Therefore § 121.155 is revoked as proposed.

The Amendment

Accordingly, the Federal Aviation Administration is revoking § 121.155 of the Federal Aviation Regulations (14 CFR § 121.155) as follows, effective July 9, 1981:

§ 121.155 [Removed]

By removing § 121.155 and marking it reserved.

(Sec. 313(a), 314, 601, 603, 610, and 611, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1355, 1421, 1423, 1424, 1430, and 1431); and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The FAA has determined that this regulation relieves an economic burden and allows operators to expand the use of their aircraft. Therefore, it—(1) is not a major rule under Executive Order 12291; (2) it is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation; and (4) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on June 15, 1981.

J. Lynn Helms,

Administrator.

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