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**14 CFR Parts 121 and 139**

[Docket No. 20450; Amdt. Nos. 121-182 and 139-13]

**Airport Certification Requirements**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

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**SUMMARY:** This amendment changes the rule specifying which airports must be certificated. This is necessary to implement a statutory amendment passed by Congress, to respond to concerns that certain airports serving "commuter" aircraft were not subject to airport certification, and to address some confusion over airport certification requirements. This amendment sets new

standards for the applicability of the airport certification rules.

**EFFECTIVE DATE:** May 29, 1984.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**Background**

The amendments adopted in this document were proposed in a Supplemental Notice of Proposed Rule Making, Notice No. 80-10A (48 FR 25211; June 6, 1983), which provided all interested persons with the opportunity to comment and to participate in rulemaking.

Since 1970, Section 612 of the Federal Aviation Act of 1958 (FA Act) (49 U.S.C. 1432) has empowered the Administrator of the FAA to issue airport operating certificates to airports serving certain air carriers and to establish minimum safety standards for the operation of those airports. Prior to the enactment of the Airport and Airway Improvement Act of 1982, this authority was limited to air carriers certificated by the Civil Aeronautics Board (CAB). The FAA implemented § 612 in 1972 by adopting Part 139 of the Federal Aviation Regulations (FAR). Under current Part 139 an airport serving an air carrier conducting operations at that airport under the authority of a certificate of public convenience and necessity (CPCN) issued by the CAB is required to hold an airport operating certificate if any of those air carrier operations at the airport are conducted in large aircraft (more than 12,500 pounds maximum certificated takeoff weight). If all of the CPCN operations at the airport are unscheduled large aircraft operations or scheduled small aircraft operations, the airport operator is required to hold a limited airport operating certificate.

As was explained in Notice 80-10A, formerly the routes on which air carriers holding CPCN's could operate were strictly controlled by the CAB. With the implementation of the Airline Deregulation Act of 1978 (Pub. L. 95-504, 92 Stat. 1705), and the relaxation of the CAB policies and regulations, route structures become more flexible, numerous scheduled air carriers not holding CPCN's ("commuters") began conducting operations similar to those that were previously conducted by only CPCN holders, and CPCN holders began serving airports not included in former routes. The FAA became concerned that currently Part 139 does not require many airports used by these "commuter" air

carriers to be certificated, although the traveling public is likely to assume that the same level of safety and service will be provided at these airports.

Under current CAB regulations, CPCN certificates only apply to operations conducted by air carriers in aircraft having a passenger seating capacity of more than 60 passengers or a payload of more than 18,000 pounds. Since current Part 139 is applicable to an airport only if it serves an air carrier conducting operations into the airport under a CPCN, airports serving only air carriers operating aircraft with less than 61 passenger seats are not required by Part 139 to be certificated. Nevertheless, § 121.590 of the FAR provides that air carrier operations conducted under the rules of Part 121 may operate only into Part 139 certificated airports. Therefore, air carriers using aircraft with a seating capacity of more than 30, but less than 61, passengers are required to operate into certificated airports under the rules of Part 121, but the airports into which they operate are not required by Part 139 to hold a certificate. Thus, airports serving air carriers operating under the rules of Part 121 using only aircraft with a seating capacity of more than 30 passengers and less than 61 passengers remain under current Part 139 only if they voluntarily elect to do so in order to keep this service. This has resulted in much confusion on the part of airport operators and air carriers as to which air carriers can operate into which airports.

On September 3, 1982, the Airport and Airway Improvement Act of 1982 (Pub. L. 97-248) was enacted, in part amending Section 610 and Section 612 of the FA Act. Section 612(a), as amended by Pub. L. 97-248, empowers the Administrator to issue airport operating certificates, and to establish minimum safety standards for the operation of, airports that serve any scheduled or unscheduled passenger operation of air carrier aircraft designed for more than 30 passenger seats. Section 612(b), as amended, provides that any person desiring to operate an airport which is described in Section 612(a) and is required by the Administrator, by rule, to be certificated, may file an application for certification with the Administrator. Section 612(a)(8) was amended to make it unlawful for any person to operate an airport without an airport operating certificate required by the Administrator pursuant to Section 612, or in violation of the terms of that certificate.

To implement the authority provided in Pub. L. 97-248, and to simplify and clarify the applicability of Part 139,

Notice 80-10A proposed to revise Part 139 and § 121.590.

Notice 80-10A proposed amending Part 139 to apply to airports serving any scheduled or unscheduled air carrier operations of aircraft having a seating capacity of more than 30 passengers. It proposed to delete references to "CAB-certificated air carriers" and to small aircraft in Part 139. In order to maintain a consistent policy toward small aircraft, it proposed to delete the requirement in § 121.590(b) that small aircraft operated by Part 121 air carriers use only certificated airports. However, Notice 80-10A proposed to continue the provision in § 121.590 that aircraft with a payload capacity of more than 7,500 pounds, that is, any cargo operations under Part 121, must operate only into certificated airports. The Notice stated that in appropriate cases the FAA would authorize a deviation from § 121.590 if (1) the air carrier shows it needs to operate an aircraft with a payload capacity over 7,500 pounds, but with a seating capacity of 30 or fewer passengers, into an uncertificated airport because of unique circumstances, and (2) the FAA determines any conditions necessary for safe operations by that air carrier into the specified airport.

**Discussion of the Comments**

Twenty comments to Notice No. 80-10A were received. The comments represent the views of the industry, state and local governments, and aviation associations.

Four of the commenters concur, and recommend adoption of the proposed rule. One commenter requests that implementation begin as soon as possible with waivers being extended to those noncompliant airports making efforts to comply.

Eleven commenters from the resort areas of New England object to requiring certification of air carrier airports that serve aircraft with between 30 and 61 seats. They state that an undue financial hardship would result for a number of airports that have seasonal service by air carriers with more than 30 seats. These commenters recommend using the CAB break-point of 60 passenger seats as the basis for airport certification. One of these commenters suggested that airports serving a small number of Part 121 aircraft per day be given exemptions from the rule. An association of airline pilots does not agree with the more than 30-seat limit proposed in the notice because it does not consider such variables as number of movements, aircraft size and the increasing numbers

of the below 30-seat carrier fleet. This association does not state what limit would in its opinion be more appropriate.

Four commenters from Alaska concur with the proposal to certificate air carrier airports served by aircraft with seating capacities of more than 30 passengers. However, these commenters object to the continued requirement in § 121.590 that all air carriers land only at certificated airports, including cargo operations. Some are under the impression that Notice 80-10A proposed a change to § 121.590 to impose this requirement. They state that requiring cargo operations to use only certificated airports would unduly restrict the number of airports available for their use, and would be a harsh burden to those small, remote communities, dependent on air cargo service, which would have to obtain certification for their airports.

The FAA is not adopting the suggestions that airport certification be keyed to the daily number of aircraft movements or to any standards other than the passenger seating capacity. It is preferable, for the efficient operation of the airport certification program and to avoid undue confusion, to have a clear standard based on easily identifiable criteria. There are few airports which have seasonal activity to the extent reported by the commenters. The FAA does not consider that there is a sufficient number to warrant general rulemaking to attend to their special circumstances. Part 139 provides for exemptions to certain sections of the regulation under appropriate circumstances. If the air carrier operations are seasonal, requests for relief from at least a portion of the requirements can be accommodated if they are justifiable. The New England airports referred to in the comments hold limited airport operating certificates, and thus have had some determination as to the necessity for fire fighting and rescue equipment. This determination will be carefully considered if they apply for exemptions from the full requirements of Part 139. The FAA has determined, therefore, that the rule as proposed will not be unduly burdensome on those airports whose service to air carrier aircraft with more than 30 passenger seats is seasonal.

The FAA disagrees with those commenters who request that cargo operations under Part 121 be permitted to use uncertificated airports under § 121.590. The FAA is required, under section 801(b) of the FA Act, to "give full consideration to the duty resting upon air carriers to perform their services

with the highest possible degree of safety in the public interest \* \* \* ." Part 121 air carrier operations may be passenger operations, part cargo and part passenger, or all cargo. The FAA continues to consider that it is necessary in the interest of maintaining the required level of safety not to permit any Part 121 operator to have the unrestricted authority to use any uncertificated airport. This is not a newly adopted requirement, contrary to some of the commenters' impressions.

The FAA recognizes, however, that there are circumstances in which it is impractical or impossible to require that a Part 121 operator conduct all of its operations into Part 139 certificated airports. This may be true, for instance, in remote areas or in special situations or limited operations, such as an "airport" that consists of a frozen lake or a beach, or a one-time fire fighting operation at a remote forest site.

In recognition of the need for some Part 121 operations to be conducted into uncertificated airports, the FAA is retaining, in the amendment, the wording which allows the Administrator to authorize deviations from § 121.590 to allow air carriers to operate into uncertificated airports. Each situation where a deviation from § 121.590 is requested must be judged on its own merits after a careful evaluation of all aspects of the proposed operation in order to assure that an appropriate level of safety is maintained. One commenter noted that a cargo air carrier was authorized by the FAA to operate into his Alaskan town's uncertificated airport after the FAA made a safety inspection of the airport. Such authorizations will continue in effect, and new ones will be granted when appropriate. This amendment will not require certification of uncertificated airports who now receive Part 121 cargo service from air carriers authorized to provide this service; nor will it require those Part 121 operators to cease operation. The FAA has determined, therefore, that this rule will not unduly burden those communities now receiving the service or those air carriers now providing the service.

The FAA reviewed the comments to Notice 80-10. Since Notice 80-10A withdrew Notice 80-10, and proposed completely different rules, the comments to Notice 80-10 are not applicable here. Many of the comments to Notice 80-10 concerned the requirements for crash, fire, and rescue equipment in Part 139. These comments have been considered in connection with a review of all of Part 139 now being undertaken by the FAA.

#### Description of the Amendment

After considering all of the comments, the FAA has decided to adopt the amendments as proposed in Notice 80-10A.

Part 139 is amended to apply to airports serving any scheduled or unscheduled air carrier operations of aircraft having a seating capacity of more than 30 passengers. The references to "CAB-certificated air carriers" in Part 139 are deleted. The more-than-30-seat limit is consistent with limited authority granted by Congress and with the general division now existing in the FAR between air carriers operating under the rules of Part 121 and those operating under Part 135.

While Pub. L. 97-248 speaks to "aircraft *designed for* more than 30 passenger seats" (emphasis added), the amendment will limit Part 139 applicability to airports serving air carrier aircraft having a *seating capacity of* more than 30 passengers. This will exclude from the certification requirement airports serving aircraft designed to carry more than 30 passenger seats, but with 30 or fewer passenger seats actually installed in the aircraft. As noted above, section 612 of the FA Act, as amended, provides the Administrator with discretion to determine the appropriate criteria for certification of airports. The FAA believes that the requirement that airports must obtain and maintain certificates should be keyed to the number of passenger seats installed, rather than the number of passenger seats for which the aircraft is designed. This will place the burden of certification on airports only when there is the potential for the safety of more than 30 passengers to be protected, and place no direct burden on the airports when only cargo air carrier operations are served.

References to small aircraft in Part 139 are being deleted, since small aircraft (12,500 pounds or less maximum certificated takeoff weight, as defined in Part 1) have about 20 or fewer seats. Section 121.590 is also being amended to delete references to small aircraft.

While Part 139 is being keyed only to passenger seating capacity, § 121.590 will continue to require aircraft with a payload capacity of over 7,500 pounds, that is, any cargo operations under Part 121, to operate only into certificated airports. Thus, while the airport operator will not have to refer to the payload capacity of the aircraft to determine whether airport certification is necessary to serve a particular cargo flight, air carriers will continue to be

required to conduct operations under Part 121 only into certificated airports. Deviations from § 121.590 will be authorized in appropriate cases. Under this scheme, air carriers operating under Part 121 will continue to be held to the highest standard of safety, in that they will in general only use certificated airports. However, the FAA will have the flexibility to determine that, with any special conditions found necessary for safety, the air carrier may operate into a particular uncertificated airport. Such a deviation may be authorized by the field office/regional office responsible for the safety certification and surveillance of the air carrier. This may be accomplished through an amendment to the air carrier's operating specifications.

It is anticipated that under the rule there will be very few Part 121 operations into uncertificated airports, and few air carriers who will find it necessary to request a deviation from § 121.590. By placing no direct burden on the operators of the airports involved, this amendment provides the least amount of regulation consistent with safety and the efficient administration of the program. As experience is gained with the amendments to Part 139, the FAA will consider whether § 121.590 should be amended to require air carriers to use certificated airports based only on passenger seating capacity.

Section 121.590 by its terms applies to domestic, flag and supplemental air carriers, and air carriers certificated under Part 127, conducting operations under Part 121. Consistent with nomenclature changes made by Special Federal Aviation Regulation 38, references to specific air carriers from the heading and body of § 121.590 are removed, and the section refers only to air carriers operating under Part 121.

#### Regulatory Evaluation

Notice No. 80-10A invited public comments concerning the identity of, and the economic relief given to, those airports electing not to continue compliance with Part 139 and the cost to those Part 121 air carriers desiring to continue service to those airports. The Notice also requested information on the economic impact to Part 121 air carriers which would discontinue passenger services under an authorized deviation from § 121.590 to airports not currently certificated under Part 139. Comments on the economic aspects of the proposal were submitted by industry, state, and local governments.

The FAA has determined that the benefits associated with the final rule amendments to § 121.590 and Part 139

exceeds its costs. The economic evaluation has concluded that the final rule changes will not have a cost impact on Part 139 airports. One air carrier, however, conducting passenger operations under a deviation from § 121.590 will have to cancel service to three uncertificated airports. The FAA anticipates that the carrier will elect to divert service to certificated airports rather than cancel all service and will incur unquantified minor costs to do so. Three airports electing not to continue to comply with Part 139 will realize future annualized savings of \$284,000 as a result of not having to maintain and replace Crash/Fire/Rescue equipment, conduct periodic facilities inspections, and comply with reporting and administrative requirements in accordance with the requirements of Part 139.

#### List of Subjects

##### 14 CFR Part 121

Aviation safety, Safety, Air carriers, Aircraft, Airplanes, Airports.

##### 14 CFR Part 139

Air safety, Safety, Aviation safety, Air carriers, Aircraft, Airports, Airplanes.

#### The Amendment

Accordingly, the Federal Aviation Administration amends Parts 121 and 139 of the Federal Aviation Regulations (14 CFR Parts 121 and 139), effective May 29, 1984 as follows:

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

1. By revising § 121.590 to read as follows:

##### **§ 121.590 Use of certificated land airports.**

(a) Unless otherwise authorized by the Administrator, no air carrier, and no pilot being used by an air carrier may, in the conduct of operations governed by this part, operate an aircraft into a land airport in any State of the United States, the District of Columbia, or any territory or possession of the United States, unless that airport is certificated under Part 139 of this chapter. However, an air carrier may designate and use as a required alternate airport for departure or destination an airport that is not certificated under Part 139 of this chapter.

(b) Notwithstanding § 121.13 (a) and (b), the provisions of this section apply to air carriers specified herein when conducting operations with helicopters.

#### **PART 139—CERTIFICATION AND OPERATIONS: LAND AIRPORTS SERVING CERTAIN AIR CARRIERS**

2. By revising the title of Part 139 to read as set forth above.

3. By revising § 139.1(a), the introductory phrase of § 139.1(b), and § 139.1(b)(2) to read as follows:

##### **§ 139.1 Applicability.**

(a) This part prescribes rules governing the certification and operation of land airports which serve any scheduled or unscheduled passenger operation of an air carrier that is conducted with an aircraft having a seating capacity of more than 30 passengers.

(b) The following are definitions of terms used in this part:

\* \* \* \* \*

(2) "Air carrier user" means an air carrier while operating an aircraft having a seating capacity of more than 30 passengers.

\* \* \* \* \*

##### **§ 139.3 [Amended]**

4. By removing the words "CAB-certificated air carrier operating aircraft into that airport" in § 139.3 and inserting, in their place, the words "scheduled or unscheduled passenger operation of an air carrier that is conducted with an aircraft having a seating capacity of more than 30 passengers".

##### **§ 139.12a [Amended]**

5. By revising the heading of § 139.12a to read as follows: § 139.12a Issue of limited certificates for airports serving only unscheduled operations.

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6. By removing the words "CAB-certificated" in § 139.12a(a).

7. By removing the words "or operations with small aircraft" in § 139.12a(a).

(Secs. 313(a) and 612 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a) and 1432); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

*Note.*—Pursuant to the amendment three airports now certificated under Part 139 are expected to drop their certificates, resulting in economic benefits to those airports. The amendment is expected to result in minor costs to an air carrier who may direct service from uncertificated airports to certificated airports. For these reasons, the FAA has determined that this document involves a regulation that is not a major regulation under Executive Order 12291 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The FAA has determined that a relatively

small number of small entities will receive an economic benefit or cost under the rule, and that these benefits or costs will be minor. It is therefore certified that under the criteria of the Regulatory Flexibility Act the rule will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation has been prepared and placed in the regulatory docket. A copy may be obtained by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, D.C., on March 14, 1984.

Michael J. Fenello,

*Acting Administrator.*

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