

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

SUBCHAPTER C—AIR CARRIERS, AIR TRAVEL CLUBS, AND OPERATORS FOR COMPENSATION OR HIRE: CERTIFICATION AND OPERATIONS

[Docket No. 9516; Amdt. 121-82]

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

Operating Certificates and Financial Reporting

The purposes of this amendment to Part 121 of the Federal Aviation Regulations are to provide for indefinite certification of commercial operators after 4 years of continuous operation under annually renewed certificates and to change the financial reporting requirements for all holders of commercial operator operating certificates.

This amendment was originally proposed in Notice 69-16 and published in the FEDERAL REGISTER on April 10, 1969 (34 F.R. 6333). Comments were received from several commercial operators and other organizations, and generally speaking they dealt with five aspects of the proposed regulations, each of which is discussed in the balance of the preamble.

Several comments were addressed to the proposed requirement in § 121.49 that projections of proposed operations be made with regard to estimated sources and amounts of revenue, estimated amount of expenses, estimated net profit or loss, and estimated cash required for the proposed operations during the first 6 months after the date of expected issuance of the certificate. As stated in the notice, the FAA has noted overall improvement in the safety record of commercial operators due, in part, to a record of financially sound operations. In keeping with this improvement, the FAA has determined, upon further examination, that the proposed requirement in § 121.49(e) for a detailed projection of the commercial operator's proposed operation should be deleted except with regard to an original certificate application. Retention of the proposed requirement for projections with regard to original certification application is made in recognition of the fact that a new commercial operation is based on a limited number of contracts and, after commencing operations, remains susceptible to unexpected economic setbacks and operating problems.

With regard to the proposal in § 121.53 for issuance of an indefinite certificate after 4 successive years of operation under annually renewed certificates, two comments suggested that a period less than 4 years would be adequate to determine whether an operator should be issued a certificate of indefinite duration. In this respect, one of the comments recommended the issuance of an indefinite certificate to an applicant who has held operating certificates continuously for 2 years. A reduction in the 4-year period goes beyond the provisions of the notice and, therefore, cannot be considered at this time. However, the FAA will continue to keep this matter under surveillance and if it appears that a proper evaluation of the stability of commercial operators can be determined in a lesser period, it will initiate further rule making in that regard. Thus, only a commercial operator who has operated under annually renewed certificates for at least 4 consecutive years immediately preceding issuance of an indefinite certificate is entitled to that certificate (e.g., rather than receiving his fifth consecutive annually renewed certificate, the applicant would receive an indefinite certificate if he has complied with the requirements for an annual certificate).

Comment was also received objecting to the proposal in § 121.55 requiring the submission of semiannual and annual financial reports, the commentator stating that this greater frequency of reporting was unjustified. It is the position of the FAA that semiannual and annual financial reports are necessary, in that they provide a better opportunity to examine the financial affairs of the operators. Also, the preparation of these financial reports is a common practice in private industry, and thus the requirement places no real burden on the operator. The FAA agrees with one commentator who suggested that submission of publicly audited financial reports be allowed in compliance with the reporting requirement. Of course, in such case the publicly audited report would have to contain all the information required by § 121.55.

Closely related to the above objection, two commentators recommended that the certificate date coincide with the operator's fiscal year thus making the financial reporting date of § 121.49 uniform with that of § 121.55. However, such action would require a substantive change in § 121.53 to provide for issuance of a certificate for less than 1 year. Since the notice proposed no change in § 121.53 in this respect, this action would be outside of the scope of the notice. It should be noted that once an operator receives an indefinite certificate, and while it is operating thereunder, it will be required to submit financial reports only on

a fiscal year basis.

Finally, comment was received recommending that the proposal in § 121.55 requiring financial reports to be submitted within 60 days of the last day of the period covered by the report, be changed to 90 days. It is the opinion of the FAA, that 60 days is a sufficient period of time in which to prepare and submit the information required. Furthermore, an increase in the period of time in which the reports must be submitted would decrease the usefulness of the information.

As proposed in the notice, the regulations will now require submission of certain insurance information. It is the opinion of the FAA that such information assists in the overall evaluation of the operator's financial condition in that it will disclose unrecorded liens against assets, unrecorded liability for insurance premiums, will assist in measuring the extent of protection available to the users of the operator in case of an accident, and will indicate which operators may be a risk due to their underinsured status. As indicated above, this data must be submitted to the FAA. Even though such information is available for inspection at the operator's office, it should, nevertheless, be included in the financial report submitted to the FAA so that it can be evaluated with the other financial information submitted by the operator.

With respect to the reporting of financial information, while it may be true that an operator who has operated successfully for several years has established a sound financial base, this fact does not eliminate the need for financial information since financial difficulties may occur at any time and adversely affect the safety of the operation.

Section 121.55(a) requires, for the first time, financial reports submitted on a fiscal year basis. It is recognized that compliance with the semiannual reporting requirement might require certain holders of commercial operator certificates to unnecessarily duplicate financial information previously reported under the regulation in effect prior to this amendment. Accordingly, authority has been provided in § 121.55(b) to permit a particular certificate holder to deviate from the new reporting requirements to the extent necessary to avoid unnecessary duplication. Deviations authorized will terminate on September 30, 1970, since thereafter the occurrence of duplicate reporting appears unlikely.

Interested persons have been given an opportunity to participate in the making of this amendment, and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, Part 121 of the Federal Aviation Regulations

(As published in the Federal Register /35 F.R. 7641/ on May 16, 1970)

is amended, effective July 15, 1970, as follows:

1. By adding the following new section after § 121.47:

§ 121.48 Commercial operator: financial statement preparation and certification.

Each financial statement containing financial information required by §§ 121.49 and 121.55 must be based on accounts prepared and maintained on an accrual basis in accordance with generally accepted accounting principles applied on a consistent basis, and must contain the name and address of the applicant's public accounting firm, if any. Information submitted must be signed by an officer, owner, or partner of the applicant or certificate holder.

2. By amending § 121.49 to read as follows:

§ 121.49 Commercial operator: financial information required for original issue or renewal.

Each applicant for the original issue or renewal of a commercial operator certificate must submit the following financial information:

(a) A balance sheet that shows assets, liabilities, and net worth, as of a date not more than 60 days before the date of application.

(b) In the case of an application for renewal, the most recent profit and loss statement required to be submitted under § 121.55. Also, if the application for renewal is filed more than 60 days after the date of the applicant's most recent profit and loss statement submitted under § 121.55, the applicant must submit a supplementary profit and loss statement covering the period from the date of the most recent statement to a date not more than 60 days before the date of application for renewal. The applicant shall submit a list of each contract that gave rise to operating income on the supplementary profit and loss statement, including the names and addresses of the contracting parties and the nature, scope, date, and duration of each contract.

(c) An itemization of liabilities more than 60 days past due on the balance sheet date, if any, showing each creditor's name and address, a description of the liability, and the amount and due date of the liability.

(d) An itemization of claims in litigation, if any, against the applicant as of the date of application showing each claimant's name and address and a description and the amount of the claim.

(e) In the case of an application for original issue, a detailed projection of the proposed operation covering 6 complete months after the month in which the certificate is expected to be issued including—

(1) Estimated amount and source of both operating and nonoperating revenue, including identification of its ex-

isting and anticipated income producing contracts and estimated revenue per mile or hour of operation by aircraft type;

(2) Estimated amount of operating and nonoperating expenses by expense objective classification; and

(3) Estimated net profit or loss for the period.

(f) An estimate of the cash that will be needed for the proposed operations during the first 6 months after the month in which the certificate is expected to be issued, including—

(1) Acquisition of property and equipment (explain);

(2) Retirement of debt (explain);

(3) Additional working capital (explain);

(4) Operating losses other than depreciation and amortization (explain); and

(5) Other (explain).

(g) An estimate of the cash that will be available during the first 6 months after the month in which the certificate is expected to be issued, from—

(1) Sale of property or flight equipment (explain);

(2) New debt (explain);

(3) New equity (explain);

(4) Working capital reduction (explain);

(5) Operations (profits) (explain);

(6) Depreciation and amortization (explain); and

(7) Other (explain).

(h) A schedule of insurance coverage in effect on the balance sheet date showing insurance companies; policy numbers; types, amounts, and periods of coverage; and special conditions, exclusions, and limitations.

(i) Any other financial information that the Administrator requires to enable him to determine that the applicant has sufficient financial resources to conduct his operations with the degree of safety required in the public interest.

3. By amending § 121.53 to read as follows:

§ 121.53 Duration of certificate.

(a) A supplemental air carrier operating certificate issued under this subpart is effective until termination of the certificate of public convenience and necessity or other economic authority issued by the Civil Aeronautics Board to the air carrier or until it is surrendered or the Administrator suspends, revokes, or otherwise terminates it.

(b) A commercial operator operating certificate is effective for 1 year. However, a certificate issued to an applicant who has held operating certificates continuously for at least 4 years immediately preceding the date of issuance, is issued without a specific expiration date.

(c) The Administrator may suspend or revoke a certificate under section 609 of the Federal Aviation Act of 1958 and the applicable procedures of Part 13 of this chapter for any cause that, at the time of suspension or revocation, would

have been grounds for denying an application for a certificate.

(d) Any certificate issued under this subpart ceases to be effective if it is surrendered, suspended, or revoked.

(e) If the Administrator suspends or revokes a certificate or it is otherwise terminated, the holder of that certificate shall return it to the Administrator.

4. By amending § 121.55 to read as follows:

§ 121.55 Commercial operator: periodic financial reports.

(a) Each holder of a commercial operator operating certificate shall submit a financial report for the first 6 months of each fiscal year and another financial report for each complete fiscal year. If a commercial operator operating certificate is suspended for more than 29 days, the certificate holder shall submit a financial report as of the last day of the month in which the suspension is terminated. The report required to be submitted by this section shall be submitted within 60 days of the last day of the period covered by the report and must include—

(1) A balance sheet that shows assets, liabilities, and net worth on the last day of the reporting period;

(2) The information required by § 121.49 (c), (h), and (i);

(3) An itemization of claims in litigation against the applicant, if any, as of the last day of the period covered by the report;

(4) A profit and loss statement with separation of items relating to applicant's commercial operator activities from his other business activities, if any; and

(5) A list of each contract that gave rise to operating income on the profit and loss statement, including the names and addresses of the contracting parties and the nature, scope, date, and duration of each contract.

(b) The Administrator may grant a deviation from the reporting requirements of paragraph (a) of this section if he determines that compliance will result in unnecessary duplication of financial information previously submitted by the certificate holder.

(c) Deviation authority granted under the authority of paragraph (b) of this section terminates September 30, 1970.

(Secs. 313(a), 601, 607, 609, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1427, 1429; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

NOTE: The reporting and/or recordkeeping requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Issued in Washington, D.C., on May 11, 1970.

J. H. SHAFER,
Administrator.