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Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 9490, Amdt. 121-70]

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

Leasing of Aircraft by Certificate Holders

The purpose of this amendment to Part 121 of the Federal Aviation Regulations is to require certificate holders certificated thereunder to provide the Administrator with copies of wet lease agreements made with other persons operating large airplanes. In addition, it provides for amending the operations specifications to indicate those regulations the Administrator determines govern operations conducted under such agreements.

This amendment is based on a notice of proposed rule making (Notice 69-13) published in the FEDERAL REGISTER on March 22, 1969 (34 F.R. 5552). Seven commentators responded to the notice and their views are discussed below.

The major concern voiced by those commentators opposed to the proposal was that short-term or emergency leases, designed to meet immediate needs, would be impossible to effect due to the proposed administrative procedure for authorization of lease arrangements, and the time that procedure would require. These commentators state that with these leases so burdened, the flexibility which they consider vital for meeting their short-term or emergency needs will be adversely affected. In this connection, they suggest that, rather than adopt this proposal as a requirement applicable to all leases, the FAA should exempt the short-term or emergency lease.

The purpose of this amendment is to enable the FAA to review lease arrangements so that it may positively be ascertained, prior to an operation, which party to the lease is responsible for the conduct of that operation and which Federal Aviation Regulations govern. It is the opinion of the FAA that in order to effectively carry out this purpose the amendment should apply to all wet lease arrangements. If, in fact, the short-term or emergency lease does make up a significant number of all leases entered into, then this is all the more reason for a clear determination, prior to the operation, of which party is responsible under the Federal Aviation Regulations for the conduct of it. The agency is confident that it can fulfill its responsibilities for administering the regulation in a timely manner so that any inconvenience to certificate holders will be held to a minimum. However, the FAA will evaluate the effectiveness of the regulation, and its administration of it, and in the light of that experience will revise the regulation if appropriate.

Two commentators stated that, as proposed, the requirement was not clear as to whether all leases or merely wet leases were covered. It was the intent of the FAA in the notice to apply this amendment to wet leases only (those leases where the lessor provides both airplane and at least a pilot flight crewmember). In order to clear up any possible misunderstanding, the language has been revised to clearly indicate that only wet leases are covered, and that any wet lease arrangement involving a Part 121 certificate holder is within the subject requirements.

Comments were received with regard to the proposed items the Administrator would consider in making his determination as to which party to the lease is conducting the operation. One commentator recommended that in addition to those items proposed there should be added the intent of the parties as expressed in the lease. To avoid any unintended restriction, this amendment adds a sixth category of consideration to encompass any other factor the Administrator considers relevant to a proper determination of which party is responsible for the operation. Under this provision, the Administrator may consider the intent of the parties.

Comment was received questioning the need for submission of a lease agreement that involved only Part 121 certificate holders, the commentators recommending that a distinction should be made between that type of lease and one between a Part 121 certificate holder and a Part 91 or Part 129 certificate holder. It was suggested that in the former case no submission is required inasmuch as Part 121 would apply regardless of which party was subsequently deemed to have operational control. In addition, one commentator suggested that if the FAA considers it necessary to have submission of data from two Part 121 certificate holders, the parties should merely be required to submit a list of their individual responsibilities.

The FAA has concluded that these recommendations will not solve the problem of enabling the FAA to review a lease arrangement prior to the conduct of an operation pursuant thereto. The FAA has determined that such a review is necessary in the interest of safety, and the fact that two Part 121 certificate holders are involved, with no attendant need to determine applicable regulations between different parts, does not lessen this necessity.

One commentator suggested that rather than adopting a procedure based upon submission of data and subsequent approval of leases by the Administrator, the regulation should be based on an operational control test setting forth criteria that would enable the parties to the lease to determine which of them was responsible for conducting the operation. The FAA is not adopting this recommendation because it would not solve the problem to which this regulation is addressed. In the past, the determination as to which party to a lease was responsible for the conduct of an operation thereunder has been made after the fact, when it was too late for the FAA to review the operation. Therefore, the FAA has concluded that it is in the interest of safety for a prior determination as to which party to the lease is responsible

(As published in the Federal Register
/35 F.R. 216/ on November 5, 1970)

for conducting the operation to be made by the agency, rather than leaving it up to the parties to decide. For the same reasons, the FAA is not adopting the recommendation that, rather than require prior examination and approval of a lease arrangement, the agency examine the lease after the fact with the presumption that the lessor has responsibility for the operation until the Administrator subsequently determines otherwise.

Finally, a comment was received objecting to the provision for the amendment of the operations specifications of the party found by the Administrator to be conducting the operation because it was felt that economic hardship would result from operations delayed pending such action. As discussed previously, it is the opinion of the FAA that delays, if any, will be minimal and that the entire procedure as proposed will lead to effective advance planning by the certificate holders concerned and result in leasing arrangements which will reduce or avoid the administrative problems several of the commentators foresee.

Interested persons have been afforded 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 is amended, effective December 5, 1970, by adding a new section immediately after § 121.5 to read as follows:

§ 121.6 Leasing of aircraft.

(a) Prior to conducting operations, each certificate holder must provide the Administrator a copy or a written memorandum of the terms of any leasing arrangement whereby the certificate holder agrees to provide an aircraft and at least a pilot flight crewmember to another person.

(b) Upon receiving a copy of an agreement, or a written memorandum of the terms thereof, the Administrator determines which party to the agreement is conducting the operation and issues an amendment to the certificate holder's operations specifications containing the following:

(1) The names of the parties to the agreement and the duration thereof.

(2) The nationality and registration numbers of each aircraft involved in the agreement.

(3) The type of operation (e.g. scheduled, passenger, etc.).

(4) The areas of operation.

(5) The regulations of this chapter applicable to the operation.

(6) A statement of the economic authority, if available.

(c) In making a determination under paragraph (b) of this section, the Administrator considers the responsibility under the agreement for the following:

(1) Crewmembers and training.

(2) Airworthiness and performance of maintenance.

(3) Dispatch.

(4) Servicing the aircraft.

(5) Scheduling.

(6) Any other factor the Administrator considers relevant.

(Secs. 313(a), 601, 604, 607, Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1424, 1427, 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 October 29, 1970.

J. H. SHAFFER,
Administrator.

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