

[4910-13-M]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 18510; SFAR No. 38]

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

PART 123—CERTIFICATION AND OPERATIONS: AIR TRAVEL CLUBS USING LARGE AIRPLANES

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

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

Special Federal Aviation Regulation No. 38; Certificate Requirements: General

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: In response to the Airline Deregulation Act of 1978 (Pub. L. 95-504) and recent actions by the Civil Aeronautics Board, this Special Federal Aviation Regulation (SFAR) simplifies the certificate issuance procedures for air carriers and other operators engaged in air commerce. The FAA is hereby providing for the issuance of (1) an FAA air carrier operating certificate to each air carrier, as defined in the Federal Aviation Act of 1958, as amended, which will cover all operations that operator conducts under Parts 121, 127, and 135 of the Federal Aviation Regulations (FARs), and (2) an FAA operating certificate to any operator who is not an air carrier which will cover all non-air carrier operations conducted by that operator under Parts 121, 123, and 135 of the FARs. Under this SFAR, only one operating certificate will be issued to an air carrier. Each type of operation an air carrier is authorized to conduct and the regulations applicable to each type operation will be specified in the air carrier's operations specifications. The impact of this SFAR is to eliminate both an immediate and future unnecessary burden on attached aircraft operations.

DATES: Effective date: December 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Raymond E. Ramakis, Regulatory Projects Branch, Safety Regulations Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591, telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Federal Aviation Regulations were designed for the issuance of one FAA operating certificate to each air carrier based on the type of operations it conducted. This regulatory plan was consistent with the economic regulations of the Civil Aeronautics Board and has worked well in the past with respect to air carrier operations conducted under certificates of public convenience and necessity or other appropriate economic authority issued by the CAB. However, the initiation by the CAB of a liberalization of its policy and regulations concerning the grant of economic authority and route authorizations together with the congressional establishment of all-cargo air services authority and the implementation of the Airline Deregulation Act of 1978 has resulted in the issuance of multiple CAB certificates, exemptions and authority authorizations with individual air carriers being granted CAB authority to conduct a variety of operations. In some cases, operators have received authority to conduct operations both as an air taxi and as an all-cargo air carrier. In other cases, domestic and flag air carriers have been granted authority to also engage in all-cargo air service operations and/or air taxi operations and some supplemental air carriers have received authority to provide scheduled domestic and/or flag service.

An operator who receives CAB authority to perform a new type of service must also apply for an FAA operating certificate and/or operations specifications. Since different Parts of the FARs are applicable to the different types of operations and each part contains its own certification and operating rules, the issuance of multiple FAA certificates has led to duplication of requirements, unnecessary paperwork, and confusion. Moreover, the authorization of the additional authority may require the grant of exemptions from mutually exclusive requirements of the different parts. Pending a detailed review and amendment of the Federal Aviation Regulations, the FAA is adopting this Special Federal Aviation Regulation to simplify the certificate issuance procedures and eliminate the undue administrative burden the current procedur-

al requirements place on affected operators and FAA field offices.

Under the SFAR, each air carrier, as defined under the Federal Aviation Act of 1958, as amended, will be issued an FAA air carrier operating certificate which will cover all operations that operator conducts under Parts 121, 127, and 135 of the Federal Aviation Regulations. Non-air carriers conducting operations under Parts 121, 123, and 135 will be issued an FAA operating certificate. The specific types of operation authorized under a certificate and the certification and operating rules applicable to each type of operation will be specified in the operator's operations specifications. The holder of an "Air Carrier Operating Certificate" may be authorized to conduct under that certificate any of the following air carrier or non-air carrier operations specified in the current FARs, except operations under Part 123 which is applicable only to air travel clubs. The holder of an "Operating Certificate" will be limited to either those operations specified in the current regulations noted below for commercial operations or those specified for an air travel club.

Air Carrier Operating Certificate

Domestic Air Carrier Operations—Part 121.
Flag Air Carrier Operations—Part 121.
Supplemental Air Carrier Operations—Part 121.
All-Cargo Air Service Operations—Part 121.
Scheduled Helicopter Operations—Part 127.
Air Taxi Operations—Small and Certain Large Aircraft—Part 135.

Operating Certificate

Commercial Operations—Large Aircraft—Part 121.
Commercial Operations—Small and Certain Large Aircraft—Part 135.
Air Travel Club Operations Using Large Airplanes—Part 123.

Although the certificate is no longer identified with a particular type of operation (e.g. domestic air carrier, air taxi operator, etc.), or with a specific Part of the Federal Aviation Regulations (e.g. Part 121 certificate holder, Part 135 certificate holder, etc.), the types of operations authorized will be identified in the operations specifications; and, the regulations applicable to each type of operation will be specified from the currently applicable regulations.

The operations specifications will be issued based on the type of aircraft the operator intends to use in the conduct of its operations. For example, an air carrier operating aircraft having a maximum passenger seating configuration, excluding any pilot seat, of 30 seats or less, and a maximum payload capacity of 7,500 pounds or less will be issued operations specifications under the provisions of Revised Part 135, effective December 1, 1978, (43 FR

(As published in the Federal Register [43 F.R. 58366] on December 14, 1978)

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46742, October 10, 1978) applicable to commuter and air taxi operations. However, in accordance with the grandfather provisions of § 135.2(d), the holder of a current air taxi operator's certificate who, on December 1, 1978, conducted its operations in those aircraft under the rules of Part 121 applicable to domestic or supplemental air carriers may elect to continue to operate those aircraft under operations specifications issued under the provisions of Part 121. Air carriers operating larger aircraft will be issued operations specifications under the provisions of Part 121. It should be noted that, depending on the type of aircraft used, an air carrier's operations specifications may include those issued under Parts 121, 127, and 135. This is consistent with the current pass-through provisions of §§ 121.9 and 135.2. Section 121.9 requires the holder of a "Part 121" certificate who conducts any operations in small and certain large airplanes to conduct those operations under the requirements of Part 135 applicable to air taxi operators. Likewise, § 135.2 requires the holder of a "Part 135" air taxi certificate who conducts any operations in certain large airplanes to conduct those operations under the applicable requirements of Part 121.

No change in the substantive requirements applicable to the aircraft listed in the operation specifications of operators who currently hold certificates is made by this SFAR. All certificate holders will continue to comply with the provisions and limitations under which they are certificated and/or operating with respect to the type of aircraft listed in their current operation specifications.

In order to provide for the orderly transition and consolidation of the multiple certificates held by some operators, the FAA operating certificates currently held by each operator will continue to be valid until such time as an operating certificate is issued to that operator under this SFAR. Present certificate holders need not apply for the new certificates which may be issued to them in connection with applications for certificate renewals and changes in their operating authority and authorizations which require amendments to their operating certificates or operations specifications. In any event, all operators will be issued the new certificates by June 30, 1980. In this connection it should also be noted that a certificate number presently held by an operator may be transferred to the new certificate if the operator wants to retain the number.

NEED FOR IMMEDIATE ACTION

In order that air carriers issued authority by the CAB pursuant to cer-

tain provisions of the Airline Deregulation Act of 1978 may commence service pursuant to such authority within the time required by that Act, and since this special SFAR is administrative in nature and relieves an unnecessary burden on the FAA and applicants for operating certificates and changes to those certificates, I find that notice and public procedure are impracticable and contrary to the public interest and that good cause exists for making this amendment effective in less than 30 days. However, the FAA intends to review the certification procedure experience under this SFAR and interested persons are invited to participate in this process by submitting such written data, views, or arguments as they may desire regarding this SFAR. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, SW., Washington, D.C. 20591. All communications received on or before January 31, 1979, will be considered by the Administrator and this SFAR may be changed in the light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

THE AMENDMENT

Accordingly, Special Federal Aviation Regulation No. 38 is adopted, effective December 14, 1978, to read as follows:

SPECIAL FEDERAL AVIATION REGULATION No. 38

Contrary provisions of Parts 121, 123, 127, and 135 of the Federal Aviation Regulations notwithstanding—

1. Persons authorized to conduct operations as an air carrier, as defined in the Federal Aviation Act of 1958, as amended, will be issued an Air Carrier Operating Certificate. All other persons except those holding an Air Carrier Operating Certificate, authorized to conduct operations under those parts will be issued an Operating Certificate. The operations specifications associated with each certificate will prescribe the type of operations and the conditions and limitations and Federal Aviation Regulations under which each type of operation shall be conducted.

2. Except as provided in paragraphs (c) and (d) of this section, each person authorized to conduct operations as an air carrier, as defined in the Federal Aviation Act of 1958, as amended, who applies for an Air Carrier Operating Certificate or for an amendment to its operations specifications to add—

(a) Aircraft having a passenger seating configuration, excluding any pilot seat, of more than 30 seats or a payload capacity of more than 7,500 pounds shall comply with the certification requirements in, and conduct its air carrier operations in those aircraft in accordance with, the requirements of Part 121, and shall be issued operations specifications under Part 121.

(b) Aircraft having a maximum passenger seating configuration, excluding any pilot seat, of 30 seats or less and a maximum payload capacity of 7,500 pounds or less, shall comply with the certification requirements in, and conduct its air carrier operations in those aircraft in accordance with, the requirements of Part 135, and shall be issued operations specifications under Part 135.

(c) An air carrier holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board when engaging in scheduled interstate air transportation using helicopters within the 48 contiguous States and the District of Columbia shall comply with the certification requirements in, and conduct its air carrier operations in those aircraft in accordance with, the requirements of Part 127, and shall be issued operations specifications under Part 127.

(d) An air carrier, whose operations on December 1, 1978, in large aircraft having a maximum passenger seating configuration, excluding any pilot seat, of 30 seats or less, and a maximum payload capacity of 7,500 pounds or less, were conducted under the rules of Part 121 applicable to domestic or supplemental air carriers, may continue to conduct its operations in such aircraft under those rules as provided in § 135.2(d) if it has given written notice to the FAA.

3. Except as provided in paragraph (c) of this section, each person who is not an air carrier as defined in the Federal Aviation Act of 1958, as amended, who applies for an Operating Certificate or for an amendment to its operation specifications to add—

(a) Aircraft having a passenger seating configuration, excluding any pilot seat, of more than 30 seats or a payload capacity of more than 7,500 pounds shall comply with the certification requirements in, and conduct its operations in those aircraft in accordance with the requirements of Part 121, and shall be issued operations specifications under Part 121.

(b) Aircraft having a maximum passenger seating configuration, excluding any pilot seat, of 30 seats or less and a maximum payload capacity of 7,500 pounds or less, shall comply with the certification requirements in, and conduct its operations in those aircraft in accordance with, the requirements

of Part 135, and shall be issued operations specifications under Part 135.

(c) An air travel club, as defined in Part 123 of the Federal Aviation Regulations, shall comply with the certification requirements in, and conduct its operations in accordance with, the requirements of Part 123, and shall be issued operations specifications under Part 123.

4. Whenever in the Federal Aviation Regulations the term domestic air carrier operating certificate, flag air carrier operating certificate, supplemental air carrier operating certificate, ATCO operating certificate, or commuter air carrier operating certificate, appears, it shall be deemed to mean "Air Carrier Operating Certificate" issued under this SFAR. All other references to operating certificates shall be deemed to mean an "Operating Certificate" issued under this SFAR unless the context indicates the reference is to an air carrier operating certificate.

5. The "Air Carrier Operating Certificate" and "Operating Certificate" specified in this SFAR will be issued to

applicants for new certificates, certificate renewals and additional operating authority, and, without application, to present certificate holders.

6. After June 30, 1980, no person may conduct operations under Part 121, 123, 127, or 135 of the Federal Aviation Regulations without, or in violation of a certificate issued under this SFAR.

This Special Federal Aviation Regulation terminates January 1, 1985, unless sooner superseded or rescinded.

(Secs. 313(a), 601, 604, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1424); sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

NOTE: The FAA has determined that this document is not significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

† Issued in Washington, D.C., on December 12, 1978.

LANGHORNE BOND,
Administrator.

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