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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 43, 91, 121, 125, 129 and
135

Foreign Air Carriers and Operators of
Certain Large U.S.-Registered Airplanes;
Final Rule

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 43, 91, 121, 125, 129, and 135****[Docket No. 24856; Amdts. No. 43-28, 91-201, 121-192, 125-9, 129-14 and 135-24]****Foreign Air Carriers and Operators of Certain Large U.S.-Registered Airplanes****AGENCY:** Federal Aviation Administration (FAA), (DOT).**ACTION:** Final rule.

SUMMARY: These amendments require that U.S.-registered aircraft leased by foreign persons be maintained in accordance with acceptable maintenance standards and clarify certain rules to preclude the commingling of noncommon (private) and common-carriage operations. These amendments are necessary to upgrade certain regulations regarding the leasing of U.S.-registered aircraft by foreign persons and to clarify the inspection and maintenance requirements applicable to foreign persons conducting private and common-carriage operations with U.S.-registered airplanes.

EFFECTIVE DATE: August 25, 1987.**FOR FURTHER INFORMATION CONTACT:**

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SUPPLEMENTARY INFORMATION:**Background**

On October 9, 1980, Part 125 of the Federal Aviation Regulations (FAR) was published in the Federal Register (45 FR 67214). With certain exceptions, not germane to the current discussion, Part 125 up to now has applied to the operation of all U.S.-registered airplanes having a passenger seating configuration of 20 or more, or a maximum payload capacity of 6,000 pounds or more, unless they are required to be operated under the rules of Part 121, 135, or 137 of the regulations.

Although Part 125 was not intended to provide acceptable safety levels for common-carriage operations, the inspection programs and maintenance requirements of § 125.247 currently apply to U.S.-registered airplanes operated outside the United States by foreign persons. This results because

Part 125 governs operation of a U.S.-registered airplane of the prescribed size unless that operation is required to be conducted under the rules of Parts 121, 135, or 137. Accordingly, up to now there has been no exclusion from Part 125 for operators under Part 129—Operations of Foreign Air Carriers.

At the time Part 125 was published, the FAA was considering rulemaking to revise Part 129 to cover inspection and maintenance requirements for U.S.-registered aircraft. Requiring foreign air carriers to comply with Part 125 immediately was deemed inappropriate in light of the possibility of change to Part 129. Consequently, in adopting Part 125, the agency established a deferred compliance date of January 1, 1983, for foreign air carriers. By Amendments 125-4 (47 FR 44718; October 12, 1982), 125-5 (49 FR 34815; September 4, 1984), 125-6 (51 FR 873; January 8, 1986), and 125-7 (52 FR 6956; March 6, 1987), the agency extended the January 1, 1983, compliance date to September 1, 1984, February 28, 1986, February 28, 1987, and February 29, 1988, respectively, to provide sufficient time for completion of this rulemaking.

Subsequent to the adoption of Part 125, the agency has carefully monitored the operating experience of large U.S.-registered airplanes operated under Part 125. The operating experience can be divided into two main areas of interest. First, the frequency with which foreign air carriers operate U.S.-registered airplanes under lease has shown a marked increase. These lease agreements are desirable since they provide a means for U.S. air carriers to arrange for use of these airplanes during periods of reduced traffic levels. The second area concerns the distinction between common carriage and noncommon carriage operations.

Most foreign air carriers and foreign persons engaged in common-carriage operations have aircraft maintenance program requirements adopted by their domestic governments which are consistent with the international standards in Part I of Annex 6 to the Convention on International Civil Aviation Organization (ICAO). ICAO, Annex 6, requires each operator to comply with the terms of the aircraft's certificate of airworthiness and to maintain the aircraft in an airworthy condition. To meet these requirements, each foreign operator of a U.S.-registered aircraft used in common carriage must ensure that the aircraft is maintained by a qualified organization with a well-trained staff and adequate workshops, equipment, and facilities. That organization must also have appropriate maintenance manuals,

records, and procedures regarding training, inspection, and release of the aircraft. However, some countries may not have requirements completely consistent with the ICAO aircraft maintenance program requirements. This means that U.S.-registered airplanes operated by foreign air carriers or persons from those countries might not meet those international standards. To allow operation of these aircraft would be inconsistent with U.S. international obligations for aircraft of its registry. These amendments will therefore require compliance with the United States' international airworthiness obligations.

Concerning the second main aspect of the operating experience of large U.S.-registered airplanes of the size covered by Part 125, that part was designed to provide a regulatory scheme for an appropriate level of safety for airplanes not used in common carriage. This regulatory intent is stated explicitly in § 125.11. That section prohibits common carriage by a Part 125 certificate holder and declares that any person holding an air carrier operating certificate is ineligible for a certificate under Part 125. The sole exception to the principle that Part 125 is intended to apply only to noncommon carriage to date has been the case of a foreign person common carrier compelled to operate under the rules of Part 125 by operating a U.S.-registered airplane of the size covered by that part. These amendments eliminate that exception by expanding Part 129 to apply to each foreign operator of a U.S.-registered aircraft engaged in common carriage operating either into and out of or wholly outside the United States.

On December 10, 1985, the FAA published Notice No. 85-24 (50 FR 50588, December 10, 1985) to resolve the issues discussed above. The public comment period closed on April 10, 1986.

Analysis of Comments

Seven public commenters responded to Notice No. 85-24. Two commenters supported the proposals to preclude the commingling of noncommon (private) and common-carriage operations. No comments were received with respect to the operational as opposed to the airworthiness and maintenance proposals of Notice No. 85-24. This, to preclude the commingling of noncommon (private) and common-carriage operations, new §§ 121.3(i), 125.11(c), 129.1(b), 129.11(a)(4) and (c), 135.11(c), and a new paragraph 5 of Section V. A., of paragraph (b) of Appendix A of Part 129 are adopted as proposed. Also, the proposals to revise

§§ 125.1(a) and (b)(1), (3), and (4), 129.1(a) and 129.11(a) are adopted as proposed.

Section 125.1(d) is removed because the cutoff date of January 1, 1983, is obsolete, and the reference to paragraph (d) is also removed from § 125.1(a).

Proposed § 125.11(a) is revised by replacing the words "is authorized to operate aircraft under an operating certificate or operations specifications" with the words "holds the appropriate operating certificate and/or operations specifications necessary to conduct operations." This revision is consistent with terminology used in SFAR 38-2. Proposed § 125.11(a) is adopted with this modification.

Several commenters recommended that proposed § 129.14(b) be revised to require a maintenance program that would be equivalent to the continuous maintenance program required for Part 121 air carriers. It was suggested that a more specific reference is needed to address the significant maintenance aspects of Part 121 which would clearly exclude an obligation for the foreign air carrier to follow other certification requirements of Part 121 or 135. To the same general effect is the suggestion of another commenter who proposes a change to language in proposed § 129.14(b) to require that the program selected meet the requirements consistent with § 121.367 or § 135.425 as appropriate. The FAA does not agree with these suggestions. A primary objective of the amendment is to require that a U.S.-registered aircraft leased by a foreign person be maintained in accordance with maintenance standards that are consistent with the requirement of the country which is a member of the International Civil Aviation Organization. The FAA considers it would be inappropriate to specify all the applicable FAR sections or to limit an operator's maintenance program requirements to those two sections because an acceptable maintenance program must be in compliance with numerous other sections of Parts 121 and 135, as appropriate.

Another commenter questions who would be responsible for airworthiness control when a foreign operator under Part 129 operates a U.S.-registered aircraft. Proposed § 129.14(a) and (b) would require each foreign person who operates a U.S.-registered aircraft in common carriage to meet prescribed maintenance requirements. Aircraft maintenance programs which are consistent with the international standards in Part I of ICAO Annex 6 require each operator to comply with the terms of the aircraft's certificate of airworthiness and to maintain the

aircraft in an airworthy condition. The Federal Aviation Regulations prescribed airworthiness standards for all U.S.-registered aircraft operating within or outside the United States, irrespective of the person operating the aircraft. This includes U.S.-registered aircraft operated by a foreign air carrier or foreign person.

The FAA has further reviewed the maintenance requirements proposed in § 129.14(b) and the comments received concerning the proposed wording of that paragraph. As written, the proposal creates a misunderstanding as to what would constitute an acceptable maintenance program as required by proposed § 129.14(a). In addition, proposed § 129.14(b) would have provided that U.S.-registered aircraft operated by foreign persons would be adequately maintained in accordance with either Part 121 or Part 135, without regard to or consideration of the maintenance standards that are consistent with the requirement of the country which is a member of the ICAO. Further, specific requirements of a maintenance program would best be identified in an Advisory Circular which could address specific requirements for a particular type of operation. Based on the foregoing, § 129.14 has been revised to impose a general requirement that U.S.-registered aircraft operated in common carriage by any foreign air carrier or any foreign person be maintained in accordance with a maintenance program which has been approved by the FAA Administrator. The specific requirements of the program will be addressed in an Advisory Circular that will provide guidance as to what would constitute an approved maintenance program. The Advisory Circular will be disseminated to FAA International Field Offices and Flight Standards District Offices.

Two commenters recommend that the maintenance rules of Part 43 be revised to include reference to Part 129. The FAA agrees and has adopted this recommendation by amending § 43.13(C).

Regulatory Evaluation

These amendments clarify the maintenance and minimum equipment list requirements applicable to U.S.-registered aircraft operated by foreign persons. Section 129.11(a)(4) will impose only a minimal cost by requiring that the registration markings of each U.S.-registered aircraft be listed on the foreign air carrier's Part 129 operations specifications.

Two commenters support the proposed sections that would preclude the comingling of noncommon (private)

and common-carriage operations, and no opposing comments were received. A minimal cost may result from the adoption of these amendments. A remote possibility exists that one or several transport category aircraft may be currently listed on both a Part 125 (private-carriage) operations specifications and either a Part 121, Part 129 or Part 135 (common carriage) operations specifications. Although such simultaneous listing of an aircraft and both private- and common-carriage operations specifications is contrary to current FAA administrative practices, a minimal cost may be incurred by the FAA and a few aircraft operators to delist and aircraft from either the private-carriage operations specifications or the common-carriage operations specifications. In addition, the few operators who may be using the same aircraft in private- and common-carriage operations under a simultaneous listing may lose some utilization of their aircraft as a result of this rule. Any costs that would be incurred are expected to be very minor, however, because of the very limited extent of this practice.

New § 129.14(b) provides for the use of a minimum equipment list by a foreign air carrier of foreign person using any U.S.-registered aircraft in common-carriage operations. The provisions of § 129.14(b) are more explicit and appropriate to common-carriage operations than the minimum equipment list requirements provided in § 91.30, which were reinstated effective March 13, 1986 (50 FR 51188, December 13, 1985), in Amendment 91-192. Both Amendment 91-192 and these amendments preclude the necessity for exemptions, thereby reducing the administrative burden of both foreign air carriers and the FAA.

Conclusion

These amendments will facilitate the agency's maintaining distinctions among Parts 91, 121, 125, 129, and 135 of the regulations so that all U.S.-registered aircraft meet appropriate standards applicable to the type of operations (air transportation versus other air commerce) being conducted. They also provide for minimum equipment list use by foreign air carriers and other foreign persons using any U.S.-registered aircraft in common carriage operations without the necessity of obtaining an exemption. These amendments will have either no impact or a small positive impact on trade opportunities of U.S. and foreign persons who may wish to enter into aircraft lease agreements. Accordingly, for these reasons and those

discussed under the heading entitled "Regulatory Evaluation," the FAA has determined that these amendments are not considered to be significant under DOT Regulatory Policies and Procedures (44 CFR Part 11034; February 26, 1979) and are not major as defined in Executive Order 12291. For these reasons and because these amendments will result in negligible costs, I certify that, under the criteria of the Regulatory Flexibility Act, the amendments will not have a significant economic impact on a substantial number of small entities. The overall economic impact of this rulemaking is so minimal that it does not require a full regulatory evaluation. In addition, benefits to this agency and some foreign operators are expected to accrue from the elimination of the need for certain exemptions.

List of Subjects

14 CFR Part 43

Air carriers, Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 91

Air carriers, aviation safety, Safety, Aircraft, Air transportation.

14 CFR Part 121

Aviation safety, Safety, Air carriers, Air transportation, Aircraft, Airplanes, Airspace, Foreign air carriers, Transportation, Common carriers.

14 CFR Part 125

Aircraft, Airplanes, Airworthiness, Air transportation.

14 CFR Part 129

Aircraft, Air carrier, Airworthiness.

14 CFR Part 135

Air carriers, Aviation safety, Safety, Air transportation, Aircraft, Transportation, Airspace, Airplanes.

Adoption of the Amendments

In consideration of the foregoing, Parts 43, 91, 121, 125, 129, and 135 of the FAR (14 CFR Parts 43, 91, 121, 125, 129, and 135) are amended as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

1. The authority citation for Part 43, continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 43.13 [Amended]

2. Section 43.13(c) is amended by inserting "and Part 129 operators holding operations specifications" after "135" wherever it appears.

PART 91—GENERAL OPERATING AND FLIGHT RULES

3. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on ICAO (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

4. By revising § 91.161(b) to read as follows:

§ 91.161 Applicability.

(b) Sections 91.165, 91.169, 91.171, 91.173, and 91.174 of this subpart do not apply to an aircraft maintained in accordance with a continuous airworthiness maintenance program as provided in Part 121, 127, 129, or § 135.411(a)(2) of this chapter.

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

5. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354 (a), 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

6. By amending § 121.3 by adding a new paragraph (i) to read as follows:

§ 121.3 Certification requirements: General

(i) No holder of an air carrier operating certificate may operate or list on any required listing of its aircraft any aircraft listed on any operations specifications issued under Part 125 of this chapter.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

7. The authority citation for Part 125 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

8. By amending § 125.1 by removing paragraphs (d) and (e) and by revising

paragraphs (a) and (b)(1), (3), and (4) to read as follows:

§ 125.1 Applicability

(a) Except as provided in paragraphs (b) and (c) of this section, this part prescribes rules governing the operations of U.S.-registered civil airplanes which have a seating configuration of 20 or more passengers, or a maximum payload capacity of 6,000 pounds or more when common carriage is not involved.

(b) * * *

(1) They are required to be operated under Part 121, 129, 135, or 137 of this chapter;

(3) They are being operated by a Part 125 certificate holder without carrying passengers or cargo under Part 91 for training, ferrying, positioning, or maintenance purposes;

(4) They are being operated under Part 91 by an operator certificated to operate those airplanes under Part 121, 135, or 137 of this chapter or are being operated by a foreign air carrier or a foreign person in common carriage solely outside the United States under Part 91 of this chapter; or

9. By amending § 125.11 by revising paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 125.11 Certificate eligibility and prohibited operations.

(a) No person is eligible for a certificate or operations specifications under this part if the person holds the appropriate operating certificate and/or operations specifications necessary to conduct operations under Part 121, 129 or 135 of this chapter.

(c) No person holding operations specifications under this part may operate or list on its operations specifications any aircraft listed on any operations specifications or other required aircraft listing under Part 121, 129, or 135 of this chapter.

PART 129—OPERATIONS OF FOREIGN AIR CARRIERS

10. The authority citation for Part 129 continues to read as follows:

Authority: 49 U.S.C. 1346, 1354(a), 1356, 1357, 1421, 1502, and 1511; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

11. By revising the title of Part 129 to read as follows:

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

12. By revising § 129.1 to read as follows:

§ 129.1 Applicability.

(a) Except as provided in paragraph (b) of this section, this part prescribes rules governing the operation within the United States of each foreign air carrier holding a permit issued by the Civil Aeronautics Board or the Department of Transportation under section 402 of the Federal Aviation Act of 1958 (49 U.S.C. 1372) or other appropriate economic or exemption authority issued by the Civil Aeronautics Board or the Department of Transportation.

(b) Section 129.14 also applies to U.S.-registered aircraft operated in common carriage by a foreign person or foreign air carrier solely outside the United States. For the purpose of this part, a foreign person is any person, not a citizen for the United States, who operates a U.S.-registered aircraft in common carriage solely outside the United States.

13. By amending § 129.11 by revising the introductory text of paragraph (a) and by adding a new paragraph (a)(4) and a new paragraph (c) to read as follows:

§ 129.11 Operations specifications.

(a) Each foreign air carrier shall conduct its operations within the United States in accordance with operations specifications issued by the Administrator under this part and in accordance with the Standards and Recommended Practices contained in Part I (International Commercial Air Transport) of Annex 6 (Operation of Aircraft) to the Convention on International Civil Aviation Organization. Operations specifications shall include:

(4) Registration markings of each U.S.-registered aircraft.

(c) No person operating under this part may operate or list on its operations

specifications any airplane listed on operations specifications issued under Part 125.

14. by adding a new § 129.14, following § 129.13, to read as follows:

§ 129.14 Maintenance program and minimum equipment list requirements for U.S.-registered aircraft.

(a) Each foreign air carrier and each foreign person operating a U.S.-registered aircraft within or outside the United States in common carriage shall ensure that each aircraft is maintained in accordance with a program approved by the Administrator.

(b) No foreign air carrier or foreign person may operate a U.S.-registered aircraft with inoperable instruments or equipment unless the following conditions are met:

(1) A master minimum equipment list exists for the aircraft type.

(2) The foreign operator submits for review and approval its aircraft minimum equipment list based on the master minimum equipment list, to the FAA Flight Standards District Office having geographic responsibility for the operator. The foreign operator must show, before minimum equipment list approval can be obtained, that the maintenance procedures used under its maintenance program are adequate to support the use of its minimum equipment list.

(3) For leased aircraft maintained and operated under a U.S. operator's continuous airworthiness maintenance program and FAA-approved minimum equipment list, the foreign operator submits the U.S. operator's approved continuous airworthiness maintenance program and approved aircraft minimum equipment list to the FAA office prescribed in paragraph (b)(2) of this section for review and evaluation. The foreign operator must show that it is capable of operating under the lessor's approved maintenance program and that it is also capable of meeting the maintenance and operational requirements specified in the lessor's approved minimum equipment list.

(4) The FAA letter of authorization permitting the operator to use an approved minimum equipment list is carried aboard the aircraft. The

minimum equipment list and the letter of authorization constitute a supplemental type certificate for the aircraft.

(5) The approved minimum equipment list provides for the operation of the aircraft with certain instruments and equipment in an inoperable condition.

(6) The aircraft records available to the pilot must include an entry describing the inoperable instruments and equipment.

(7) The aircraft is operated under all applicable conditions and limitations contained in the minimum equipment list and the letter authorizing the use of the list.

15. By amending paragraph (b) of Appendix A of Part 129, by amending Section V. A., by adding a new paragraph 5 to read as follows:

Appendix A—Application for Operations Specifications by Foreign Air Carriers

(b) * * *

Section V. Aircraft. * * *

A. Aircraft.

5. Registration markings of each U.S.-registered aircraft.

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PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

16. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

17. By amending § 135.11, by adding a new paragraph (c) to read as follows:

§ 135.11 Application and issue of certificate and operations specifications.

* * * * *

(c) No person holding operations specifications issued under this part may list on its operations specifications or on the current list of aircraft required by § 135.63(a)(3) any airplane listed on operations specifications issued under Part 125.

Issued in Washington, DC, on May 19, 1987.

Donald D. Engen,

Administrator.

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