

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 119, 121 and 135**

[Docket No. 28154; Amendment Nos. 119–2, 121–259, and 135–65]

Rin 2120–AG03

Operating Requirements: Domestic Flag, Supplemental, Commuter, and On-Demand Operations: Corrections and Editorial Changes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts changes that are editorial or typographical in nature in parts 119, 121, and 135. The changes are necessary to correct errors or clarify the intent of the regulations published on December 20, 1995 (60 FR 65832). The changes in this amendment will not impose any additional restrictions on persons affected by these regulations.

EFFECTIVE DATE: July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Office of Rulemaking (ARM–100); Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–9685.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 1995, new part 119, Certification: Air Carriers and Commercial Operators, was published in the Federal Register (60 FR 65832; December 20, 1995). Part 119 reorganizes, into one part, certification and operations specifications requirements that formerly existed in SFAR 38–2 and in parts 121 and 135. The final rule for new part 119 also deleted or changed certain sections in part 121, Subparts A through D, and part 135, Subpart A, because the requirements in those subparts have been recodified in part 119. Also on December 20, 1995, a final rule was published that upgrades the training requirements for part 121 operators and requires certain part 135 operators to conduct their training under the requirements of part 121 (60 FR 65940). On January 26, 1996, another final rule was published (61 FR 2608) affecting parts 119, 121, and 135. That amendment made editorial and terminology changes in the remaining subparts of parts 121 and 135 to conform those parts to the language of part 119 and to make certain other changes.

Part 119 was issued as part of a large rulemaking effort to upgrade the requirements that apply to scheduled operations conducted in airplanes that seat 10 to 30 passengers. These operations will in the future be conducted under the requirements of part 121, in accordance with the final rule published on December 20, 1995.

The changes in this final rule are necessary because, as a result of the implementation of part 119 and the beginning of the transition process for commuter operations affected by the final rule published on December 20, 1995, a number of questions of interpretation have been raised and errors in previous final rules have been identified. The changes in this document make necessary corrections and will help to clarify the intent of part 119, the training rule, and the commuter rule.

Preamble Correction

In the preamble to the commuter final rule, the FAA attributed a comment incorrectly. The statement on 60 FR 65872 that the Regional Airline Association recommends that the FAA require each certificate holder to equip its airplanes with TCAS II and a Mode S transponder was incorrect. This recommendation was made by the Air Line Pilots Association.

Editorial Changes

A number of changes are necessary in parts 119, 121, and 135 to correct typographical errors, to make minor editorial changes that help clarify the intent of the rules, or to make editorial changes that make related rules consistent with each other. These types of changes are not individually explained. However, a number of changes are being made that require some explanation, which follows:

1. Section 119.2 and SFAR 38–2 are amended to reinstate certain part 121 and 135 sections that were removed by the commuter rule to make it clear that persons who originally were certificated under SFAR 38–2 must continue to comply with those sections in parts 121 and 135, that have been recodified into part 119, until they receive new operations specifications issued under part 119, or until March 20, 1997, whichever occurs first.

2. New paragraph (j) is added to § 121.2 to clarify how crewmembers and certificate holders transitioning to part 121 can obtain credit for training and qualification obtained under part 135.

3. Section 121.404 is amended by correcting the date in the introductory paragraph to March 19, 1998, as was originally published in the Air Carrier

and Commercial Operator Training Programs (60 FR 65940, December 20, 1995).

4. Sections 121.721, 121.723, and 135.43 are amended to clarify the status of international crewmember certificates. The FAA no longer issues these certificates because the State Department no longer processes them; however crewmembers who already have been issued these certificates may continue to use them.

5. Sections 121.431 and 135.3 are revised to remove the redundant phrase “* * *or with airplanes having a passenger seating configuration of 10 seats or more.”

Corrections to Tables

Several additional corrections are necessary for Tables 2–4, which were originally published on December 20, 1995 (60 FR 65850, 65888, 65890) and were republished on January 26, 1996 (61 FR 2618, 2619, and 2621), as follows:

1. In Table 2—Comparable Sections in Parts 121 and 135, the word “underwater” in the listing under Subpart K should be “overwater.”

2. In Table 4—Distribution Table for Part 119, correct the listing for § 121.5, which was replaced by § 119.21(a), not § 119.49(a).

Federalism Implications

The regulations do not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirements associated with this rule have already been approved. There will be a decrease in the paperwork requirements as a result of the elimination of the issuance of the certificate formerly issued to crewmembers engaged in international travel in accordance with sections 121.723 and 135.43.

Good Cause Justification for Immediate Adoption

This amendment is needed to make editorial corrections in parts 119, 121, and 135. In view of the need to expedite these changes, and because the amendment is editorial in nature and would impose no additional burden on the public, I find that notice and

opportunity for public comment before adopting this amendment is unnecessary.

Conclusion

The FAA has determined that this regulation imposes no additional burden on any person. Accordingly, it has been determined that the action: (1) Is not a significant rule under Executive Order 12866; and (2) is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); Also because this regulation is of editorial nature, no impact is expected to result and a full regulatory evaluation is not required. In addition, the FAA certifies that the rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

14 CFR Part 119

Administrative practice and procedures, Air carriers, Air taxis, Aircraft, Aviation safety, Charter flights, Commuter operations, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 135

Aircraft, Airplanes, Airworthiness, Air transportation.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends the Federal Aviation Regulations (14 CFR parts 119, 121, and 135) as follows:

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

1. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 44105, 44106, 44111, 44701–44717, 44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

2. Section 119.2 is revised to read as follows:

§ 119.2 Compliance with 14 CFR part 119 or SFAR 38–2 of parts 121 and 135 of this chapter.

(a) Each certificate holder that before January 19, 1996, was issued an air carrier certificate or operating certificate

and operations specifications under the requirements of part 121, 135, or SFAR 38–2 of parts 121 and 135 of this chapter shall continue to comply with SFAR 38–2 of parts 121 and 135 of this chapter until March 20, 1997, or until the date on which the certificate holder is issued operations specifications in accordance with part 119, whichever occurs first. In addition, persons conducting operations under SFAR 38–2 of parts 121 and 135 of this chapter shall continue to comply with the applicable requirements of §§ 121.6, 121.57, 121.59, 121.61, 121.71 through 121.83, 135.5, 135.11(c), 135.15, 135.17, 135.27, 135.29, 135.33, 135.35, 135.37, and 135.39 of this chapter as in effect on January 18, 1996, until March 20, 1997, or until the date on which the certificate holder is issued operations specifications in accordance with part 119, whichever occurs first. If a certificate holder is issued operations specifications in accordance with part 119 before March 20, 1997, then, notwithstanding all provisions in SFAR 38–2 of parts 121 and 135 of this chapter, such certificate holder shall comply with the provisions of part 119.

A copy of these regulations may be obtained from the Federal Aviation Administration, Office of Rulemaking (ARM), 800 Independence Ave., SW., Washington, DC 20591, or by phone (202) 267–9677.

(b) Each person who on or after January 19, 1996, applies for or obtains an initial air carrier certificate or operating certificate and operations specifications to conduct operations under part 121 or 135 of this chapter shall comply with this part, notwithstanding all provisions of SFAR 38–2 of parts 121 and 135 of this chapter.

3. Section 119.3 is amended by revising the introductory text of the definition for “commuter operation,” revising paragraph (1)(ii) of the definition for “on-demand operation,” revising paragraphs (1)(iii) and (2)(i) and adding paragraph (1)(iv) of the definition for “supplemental operation,” and revising the introductory text of the definition for “when common carriage is not involved or operations not involving common carriage” to read as follows:

§ 119.3 Definitions.

* * * * *

Commuter operation means any scheduled operation conducted by any person operating one of the following types of aircraft with a frequency of operations of at least five round trips per week on at least one route between

two or more points according to the published flight schedules:

* * * * *

On-demand operation * * *

(1) * * *

(ii) Noncommon or private carriage operations conducted with airplanes having a passenger-seat configuration of less than 20 seats, excluding each crewmember seat, and a payload capacity of less than 6,000 pounds; or

* * * * *

Supplemental operation * * *

(1) * * *

(iii) Each propeller-powered airplane having a passenger-seat configuration of more than 9 seats and less than 31 seats, excluding each crewmember seat, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations; or

(iv) Each turbojet powered airplane having a passenger seat configuration of 1 or more and less than 31 seats, excluding each crewmember seat, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations.

(2) * * *

(i) Passenger-carrying operations for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative; or

* * * * *

When common carriage is not involved or operations not involving common carriage means any of the following:

* * * * *

4. Section 119.21 is amended by revising the section heading and by revising paragraph (a) introductory text, and (a)(3) to read as follows:

§ 119.21 Commercial operators engaged in intrastate common carriage and direct air carriers.

(a) Each person who conducts airplane operations as a commercial operator engaged in intrastate common carriage of persons or property for compensation or hire in air commerce, or as a direct air carrier, shall comply with the certification and operations specifications requirements in subpart C of this part, and shall conduct its:

* * * * *

(3) Supplemental operations in accordance with the applicable requirements of part 121 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements. However, based on a determination of

safety in air commerce, the Administrator may authorize or require those operations to be conducted under paragraph (a)(1) or (a)(2) of this section.

5. Section 119.23 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 119.23 Operators engaged in passenger-carrying operations, cargo operations, or both with airplanes when common carriage is not involved.

(b) Each person who conducts noncommon carriage (except as provided in § 91.501(b) of this chapter) or private carriage operations for compensation or hire with airplanes having a passenger-seat configuration of less than 20 seats, excluding each crewmember seat, and a payload capacity of less than 6,000 pounds shall—

6. Section 119.33 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 119.33 General requirements.

(c) Each applicant for a certificate under this part and each applicant for operations specifications authorizing a new kind of operation that is subject to § 121.163 or § 135.145 of this chapter shall conduct proving tests as authorized by the Administrator during the application process for authority to conduct operations under part 121 or part 135 of this chapter.

7. Section 119.63 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 119.63 Recency of operation.

(b) If a certificate holder does not conduct a kind of operation for which it is authorized in its operations specifications within the number of calendar days specified in paragraph (a) of this section, it shall not conduct such kind of operation unless—

8. Section 119.67 is amended by revising paragraph (d)(3) to read as follows:

§ 119.67 Management personnel: Qualifications for operations conducted under part 121 of this chapter.

(3) Have at least 1 year of experience in a supervisory capacity maintaining the same category and class of aircraft as the certificate holder uses.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

8. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

9. Special Federal Aviation Regulation 38–2 is amended by adding a new paragraph (d) to section 1 to read as follows:

SFAR No. 38–2—Certification and Operating Requirements

(d) Persons conducting operations under this SFAR shall continue to comply with the applicable requirements of §§ 121.6, 121.57, 121.59, 121.61, 121.71 through 121.83, 135.5, 135.11(c), 135.15, 135.17, 135.27, 135.29, 135.33, 135.35, 135.37, and 135.39 of this chapter as in effect on January 18, 1996, until March 20, 1997, or until the date on which the certificate holder is issued operations specifications in accordance with part 119, whichever occurs first. A copy of these regulations may be obtained from the Federal Aviation Administration, Office of Rulemaking (ARM), 800 Independence Ave., SW., Washington, DC 20591, or by phone (202) 267–9677.

10. Section 121.2 is amended by revising paragraphs (d)(1) introductory text and (d)(2) introductory text, (d)(2)(ii) and (h); and adding new paragraph (j) to read as follows:

§ 121.2 Compliance schedule for operators that transition to part 121; certain new entrant operators.

(1) *Nontransport category turbopropeller powered airplanes type certificated after December 31, 1964, that have a passenger seat configuration of 10–19 seats.* No certificate holder may operate under this part an airplane that is described in paragraph (a)(10)(i) of this section on or after a date listed in paragraph (d)(1) of this section unless that airplane meets the applicable requirement listed in paragraph (d)(1) of this section:

(2) *Transport category turbopropeller powered airplanes that have a passenger seat configuration of 20–30 seats.* No certificate holder may operate under this part an airplane that is described in paragraph (a)(1)(ii) of this section on or after a date listed in paragraph (d)(2) of this section unless that airplane meets the applicable requirement listed in paragraph (d)(2) of this section:

(ii) December 20, 2010: § 121.305(j), third attitude indicator.

(h) *Continuing requirements.* A certificate holder described in paragraph (a) of this section shall comply with the applicable airplane operating and equipment requirements of part 135 of this chapter for the airplanes described in paragraph (a)(1) of this section, until the airplane meets the specific compliance dates in paragraphs (d) and (e) of this section.

(j) Any training or qualification obtained by a crewmember under part 135 of this chapter before March 20, 1997, is entitled to credit under this part for the purpose of meeting the requirements of this part, as determined by the Administrator. Records kept by a certificate holder under part 135 of this chapter before March 20, 1997, can be annotated, with the approval of the Administrator, to reflect crewmember training and qualification credited toward part 121 requirements.

11. Section 121.157 is amended by revising paragraph (e) and the introductory text of paragraph (f) to read as follows:

§ 121.157 Aircraft certification and equipment requirements.

(e) *Commuter category airplanes.* Except as provided in paragraph (f) of this section, no certificate holder may operate under this part a nontransport category airplane type certificated after December 31, 1964, and before March 30, 1995, unless it meets the applicable requirements of § 121.173 (a), (b), (d), and (e), and was type certificated in the commuter category.

(f) *Other nontransport category airplanes.* No certificate holder may operate under this part a nontransport category airplane type certificated after December 31, 1964, unless it meets the applicable requirements of § 121.173 (a), (b), (d), and (e), was manufactured before March 20, 1997, and meets one of the following:

§ 121.317 [Amended]

12. Section 121.317(l) is amended by changing the date “December 22, 1997” to “December 20, 1997.”

13. Section 121.385(c) is revised to read as follows:

§ 121.385 Composition of flight crew.

(c) The minimum pilot crew is two pilots and the certificate holder shall

designate one pilot as pilot in command and the other second in command.

* * * * *

14. Section 121.404 is revised to read as follows:

§ 121.404 Compliance dates: Crew and dispatcher resource management training.

After March 19, 1998, no certificate holder may use a person as a flight crewmember, and after March 19, 1999, no certificate holder may use a person as a flight attendant or aircraft dispatcher unless that person has completed approved crew resource management (CRM) or dispatcher resource management (DRM) initial training, as applicable, with that certificate holder or with another certificate holder.

15. Section 121.406 is amended by revising the section heading to read as follows:

§ 121.406 Credit for previous CRM/DRM training.

* * * * *

16. Section 121.431 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 121.431 Applicability.

(a) * * * The qualification requirements of this subpart also apply to each certificate holder that conducts commuter operations under part 135 of this chapter with airplanes for which two pilots are required by the aircraft type certification rules of this chapter

* * * * *

17. Section 121.721 is revised to read as follows:

§ 121.721 Applicability.

This section describes the certificates that were issued to United States citizens who were employed by air carriers at the time of issuance as flight crewmembers on United States registered aircraft engaged in international air commerce. The purpose of the certificate is to facilitate the entry and clearance of those crewmembers into ICAO contracting states. They were issued under Annex 9, as amended, to the Convention on International Civil Aviation.

18. Section 121.723 is revised to read as follows:

§ 121.723 Surrender of international crewmember certificate.

The holder of a certificate issued under this section, or the air carrier by

whom the holder is employed, shall surrender the certificate for cancellation at the nearest FAA Flight Standards District Office at the termination of the holder's employment with that air carrier.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

19. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

20. Section 135.2 is amended by removing paragraphs (h) and (i), by revising the first sentence of paragraph (c), and by revising (d)(1) introductory text, and (d)(2) introductory text to read as follows:

§ 135.2 Compliance schedule for operators that transition to part 121 of this chapter; certain new entrant operators.

* * * * *

(c) *Regular or accelerated compliance.* Except as provided in paragraphs (d), and (e) of this section, each certificate holder described in paragraph (a)(1) of this section shall comply with each applicable requirement of part 121 of this chapter on and after March 20, 1997 or on and after the date on which the certificate holder is issued operations specifications under this part, whichever occurs first. * * *

(d) * * *

(1) *Nontransport category turbopropeller powered airplanes type certificated after December 31, 1964, that have a passenger seat configuration of 10–19 seats.* No certificate holder may operate under this part an airplane that is described in paragraph (a)(1)(i) of this section on or after a date listed in paragraph (d)(1) of this section unless that airplane meets the applicable requirement listed in paragraph (d)(1) of this section:

* * * * *

(2) *Transport category turbopropeller powered airplanes that have a passenger seat configuration of 20–30 seats.* No certificate holder may operate under this part an airplane that is described in paragraph (a)(1)(ii) of this section on or after a date listed in paragraph (d)(2) of this section unless that airplane meets the applicable requirement listed in paragraph (d)(2) of this section:

* * * * *

21. Section 135.3 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 135.3 Rules applicable to operations subject to this part.

* * * * *

(b) After March 19, 1997, each certificate holder that conducts commuter operations under this part with airplanes in which two pilots are required by the type certification rules of this chapter shall comply with subparts N and O of part 121 of this chapter instead of the requirements of subparts E, G, and H of this part. * * *

* * * * *

22. Section 135.43 is revised to read as follows:

§ 135.43 Crewmember certificates: International operations.

(a) This section describes the certificates that were issued to United States citizens who were employed by air carriers at the time of issuance as flight crewmembers on United States registered aircraft engaged in international air commerce. The purpose of the certificate is to facilitate the entry and clearance of those crewmembers into ICAO contracting states. They were issued under Annex 9, as amended, to the Convention on International Civil Aviation.

(b) The holder of a certificate issued under this section, or the air carrier by whom the holder is employed, shall surrender the certificate for cancellation at the nearest FAA Flight Standards District Office at the termination of the holder's employment with that air carrier.

23. Section 135.64 is amended by revising paragraph (b)(2) to read as follows:

§ 135.64 Retention of contracts and amendments: Commercial operators who conduct intrastate operations for compensation or hire.

* * * * *

(b) * * *

(2) The information required by § 119.35(g)(2), (g)(7), and (g)(8) of this chapter;

* * * * *

Issued in Washington, DC, on June 4, 1996.
Donald P. Byrne,
Assistant Chief Counsel for Regulations.
[FR Doc. 96–14565 Filed 6–13–96; 8:45 am]

BILLING CODE 4910–13–M