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Part II

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14 CFR Part 119, et al.
Commuter Operations and General Certification and Operations Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 119, 121, 125, 127, and 135

[Docket No. 28154; Notice No. 95–5]

Commuter Operations and General Certification and Operations Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would require certain commuter operators that now conduct operations under part 135 to conduct those operations under part 121. The commuter operators that would be affected are those conducting scheduled passenger-carrying operations in airplanes that have a passenger-seating configuration of 10 to 30 seats and those conducting scheduled passenger-carrying operations in turbojets regardless of seating configuration. The proposed rule would revise the requirements concerning operating certificates and operations specifications. The rule would also propose certain management officials for all operators under parts 121 and 135. The need for this rulemaking is supported by a study conducted by the National Transportation Safety Board (NTSB), testimony at Congressional hearings, and accident statistics. The proposed rule is intended to increase safety in scheduled passenger-carrying operations and to clarify, update, and consolidate the certification and operations requirements for persons who transport persons or property by air for compensation or hire.

DATES: Comments must be received on or before June 27, 1995.

ADDRESSES: Send or deliver comments on this notice in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Room 915G, Docket No. , 800 Independence Avenue SW., Washington, DC 20591. Comments may also be submitted to the Rules Docket by using the following Internet address: nprmcmts@mail.hq.faa.gov Comments must be marked Docket No. . Comments may be examined in the Rules Docket between 8:30 a.m. and 5 p.m. on weekdays, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8248.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of this proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. ." The postcard will be dated and time stamped and returned to the commenter. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA–230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Requests must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

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Background

I. Introduction

Currently, scheduled passenger-carrying air transportation operations under common carriage are conducted under the Federal Aviation Regulations (FAR) of 14 CFR part 121 and part 135. Scheduled passenger-carrying operations in airplanes with passenger-seating configurations of over 30 seats or more than 7,500 pounds payload capacity are conducted under part 121. Scheduled passenger-carrying operations in airplanes with passenger-seating configurations of 30 seats or less or 7,500 pounds or less payload capacity are conducted under part 135. Part 121, which provides the safety requirements for all major air carriers (as well as for any operator conducting scheduled or nonscheduled operations with airplanes configured with more than 30 passenger seats), is generally considered to have more restrictive requirements than part 135. The differences between parts 121 and 135

reflect differences in the size of the aircraft and the scope of the operations. Part 135 is considered to provide a level of safety comparable to part 121; however, the FAA continually evaluates changes in the industry and the aviation environment that may necessitate upgrading the regulations in order to continue to fulfill the agency's statutory requirement.

II. History

For most of the history of aviation safety regulations, one dividing line served to separate the regulations that determined airplane design and type certification, flight operations, maintenance, pilot, and economic requirements. The dividing line between these sets of regulations was first established in 1953 and was based on the maximum certificated takeoff weight (MCTW) of an airplane.

Airplanes with an MCTW of 12,500 pounds or less were small airplanes and were operated under part 135. Airplanes with an MCTW of more than 12,500 pounds were considered large airplanes. Large airplanes, which were generally designed to carry 20 or more passengers, were used for scheduled air transportation while small airplanes, which were generally designed to carry fewer than 10 passengers, were used for on-demand air taxi service. The Civil Aeronautics Board (CAB) used the large/small dividing line to separate major airline companies, who were required to obtain a Certificate of Public Convenience and Necessity (CPCN) from the CAB in order to operate in interstate commerce as a common carrier, from on-demand air taxi operators, who were exempted from obtaining a CPCN.

During this time, the CAB issued only a small number of CPCN's, and the companies that received them became household names to the air traveling public (Eastern, American, Delta, Pan Am, TWA, etc.). In contrast, on-demand air taxi operators numbered in the thousands.

Before 1970, the typical air taxi operator was a fixed-base operator, usually at a small airport, that owned fewer than five airplanes and provided on-demand air transportation as well as other services, such as training new pilots and selling and renting small airplanes. Typically, the air taxi portion of such an operator's business was a small part of that business and rarely involved any scheduled operations.

Beginning in the late 1960's, airplane manufacturers began to design and build small airplanes that were capable of carrying more than 10 passengers, and pushed the passenger capacity of the small airplanes higher until it approached 20 passengers. As these airplanes became available, some air taxi operators began to offer services that resembled the services of the major airlines. There was an economic incentive for these new commuter-type operators to buy these airplanes and operate under the less restrictive requirements of part 135. As part 135 operators acquired more of these airplanes, the nature of some part 135 operations changed dramatically from the traditional small airplane air taxi operation to a scheduled commuter operation. Although the number of these scheduled operators grew, they still remained a small percent of the thousands of air taxi operators.

In 1978, as a result of the Airline Deregulation Act, the airline industry was deregulated economically, with air carriers given more freedom to enter and exit markets without prior government economic approval. This caused major changes throughout the airline industry. One of the most significant changes was the ability of the major carriers to eliminate service to smaller points that proved to be uneconomical for the size of aircraft they operated and to be replaced at those points by the smaller commuter carriers. Under this system, the major part 121 air carriers provided service to the large metropolitan airports, while the growing class of scheduled part 135 air carriers provided service between the smaller communities as well as feeder service from the smaller points to the larger cities to connect with the major carriers' operations. This became commonly known as the 'hub and spoke' system. The most significant effect of these changes was that the traditional two categories of operations had been replaced by three categories of operations. The new category contained scheduled commuter operations that were neither traditional air taxis nor traditional major air carriers.

Also in 1978, in response to the Airline Deregulation Act, the FAA reissued part 135 standards to upgrade commuter and air taxi safety requirements and make them more like part 121. At that time part 135 operators were required to meet more stringent requirements in several areas, including weather reporting, flightcrew training, maintenance, and qualifications for management personnel.

Since 1978, the FAA has issued a number of separate rule changes to further align part 135 safety requirements. Certain part 135 operators (depending on type of engines and passenger-seating capacity) are now required to have cockpit voice recorders, flight data recorders (except some 10- to 19-seat airplanes), and ground proximity warning systems.

Despite the FAA's realignment of part 135, differences between the regulations still exist. The economic incentive to operate under part 135 still exists because the requirements in part 135 are still less restrictive than the part 121 requirements in most instances.

For the remainder of this document the following terms are used in the following ways. "Commuter," "commuter airline," and "commuter operator" means those operators and scheduled passenger-carrying operations conducted under part 135 in airplanes with a passenger-seating capacity of 30 or fewer seats. This is the FAA's current use of the word "commuter," which does not include scheduled passenger-carrying operations conducted under part 121 in airplanes with a seating capacity of 31 to 60 seats. The Department of Transportation (DOT) uses the term "commuter" more broadly to include all scheduled passenger-carrying operations conducted in airplanes with a passenger-seating capacity of 20 to 60 seats. The term "regional," which is used by industry to refer to short-haul, passenger-carrying, scheduled operations conducted under part 121 or part 135, is not generally used by the FAA and is not used in this document.

III. The Problem and Recent FAA Actions

Recent part 135 commuter accidents have focused public, government, and industry attention on the safety of commuter operations. While the safety level of part 135 operations has continued to improve, accident data, public perception, and recent government inquiries show a need for additional measures.

III.A. Accident Rate for Commuter Operations

The airline industry that uses airplanes with a passenger-seating capacity of 60 or fewer seats to conduct scheduled operations under parts 121 and 135 is an essential part of the air transportation network in the U.S. These airlines now fly more than all airlines did in 1958. In 1993, over 50 million passengers, 12 percent of the total passenger flights in the country, were flown by these airlines. Half of these passengers were flown in part 135 operations, i.e., in aircraft with 30 or fewer seats.

The typical airplane flown in commuter operations under part 135 is a turbopropeller-powered 19-seat airplane such as the Brazilian-made

Embraer Bandeirante, the German-made Dornier 228, the British-made BAE 31 Jetstream, and the U.S.-made Fairchild Metro and Beechcraft 1900. These modern airplanes have advanced electronics and are type certificated for two pilots. They cruise at 250 knots at an altitude of 25,000 feet. Over the past two decades the safety record of part 135 commuters has greatly improved. The accident rate per 100,000 departures in 1993 was one-fourth the accident rate in 1980. However, the accident rate for commuter airlines operating under part 135 continues to be higher than the rate for domestic part 121 airlines. In the past 2 years, several commuter airline accidents occurred that attracted media and public attention and caused government and industry officials to scrutinize the safety system for commuter operations under part 135. A summary of the most pertinent of these accidents follows:

- On December 1, 1993, a Jetstream 31, operated by Express II (operated as Northwest Airlink), crashed at Hibbing, Minnesota, on an instrument approach, killing 18 people. A major factor in the accident was the captain's failure to follow standard operating procedures in his decision to use an excessive descent rate during the approach.
- On January 7, 1994, a Jetstream 41, operated by Atlantic Coast Airlines (as United Express), stalled while executing an instrument landing system approach to the Port Columbus Airport in Columbus, Ohio. Of the eight people on board, five died and three survived. The National Transportation Safety Board (NTSB) found that the flightcrew flew an unstabilized approach, failed to monitor airspeed, improperly responded to the stall warning, and allowed the airplane to stall.
- On December 13, 1994, a Jetstream 3200, operated by Flagship Airlines (as American Eagle), crashed at Raleigh-Durham, North Carolina, on an instrument approach, killing the two pilots, and 15 of the 18 passengers. The cause of the accident is not yet known.

These accidents involved commuter flights conducted under part 135. Media attention to these and other commuter-type accidents has increased concerns about the safety of these operations.

III.B. Public Perception

With the increase in the number of flights to many communities conducted in airplanes with a seating capacity of 30 seats or less, some members of the public are questioning whether they are receiving an appropriate level of safety in small propeller-driven airplanes as compared to the level of safety they receive in large jets. This public concern is partly a result of the integration of commuter carriers with major airlines under an arrangement known as code-sharing. The term "code-sharing" refers to the computerized airline reservation system that lists a commuter flight in the reservation system under the same code used by a major carrier. Code sharing arrangements range from marketing agreements to ownership of the code-sharing partner by the major carrier. A passenger who books with a major carrier may have a leg of the flight automatically booked with a smaller commuter affiliate of the major carrier. The first time the passenger realizes this is during boarding the smaller airplane. Despite the practice of the affiliate commuter using a similar uniform and airplane paint scheme as the major airline, the passenger realizes that the type of service has changed: there is a stairway off the tarmac rather than a ramp at the terminal; there is less leg room and less room for carry-on baggage; there is more noise; the flight is at a lower altitude; etc.

With the media attention to recent commuter accidents, the passenger may also believe that the flight involves more risk because the smaller airplane and its operation may not have to meet the same safety standards. Most passengers probably do not realize that some differences in standards are necessary because of differences in the airplane and operation and that some of the accidents that are categorized by the media as "commuter" accidents occurred in flights that were being conducted under part 121; that is, in airplanes with over 30 passenger seats.

As stated earlier in this notice, the differences in regulations were initially based on differences in the types of operations and differences in the size of airplanes; these differences in many instances still apply. One would not expect, nor would it be feasible, for a 6-seat airplane operated as an on-demand air taxi to meet all of the requirements that a scheduled 350-seat transport category jet must meet. There are inherent differences between the 6-seater and the large jet. The 6-seater cannot accommodate all the safety equipment or redundant systems of a large jet. On the other hand, the 6-seater may fill a need by being more maneuverable and capable of using smaller airports, etc.

While some of the differences in the requirements between part 121 and part 135 reflect differences in the size and operation of the airplanes, other differences do not, such as how many hours a pilot may fly, what emergency equipment must be carried, and what procedures must be followed in icing conditions. Some differences between the two sets of regulations must be maintained while others can be eliminated to improve the safety of commuter operations.

III.C. Congressional Hearings

On February 9, 1994, Congress held hearings on the adequacy of commuter airline safety regulations. The purpose of the hearings was to determine if FAA safety regulations should be modified to establish a single standard for all scheduled operations regardless of airplane size. Testimony was presented by the FAA Administrator, the Chairman of the NTSB, the president of the Regional Airline Association, the president of the Airline Pilots Association, the president of the Airline Dispatchers Federation, and the director of the Aviation Consumer Action Project.

Most testimony supported the view that the requirements for 10- to 30-seat commuter operations should be as restrictive as those for airplanes with 31 or more seats under part 121; that safety equipment such as flight data recorders, ground proximity warning systems, and Traffic Alert and Collision Avoidance System (TCAS) should be required on airplanes used in commuter service; that pilot training should be the same in part 135 commuter operations as is in part 121; and that part 135 commuter operations should use a dispatch system.

III.D. NTSB Study

In November 1994, the NTSB published a study on commuter airline safety. (National Transportation Safety Board Safety Study: Commuter Airline Safety, NTSB/SS–94/02.) The study was based on the NTSB's analysis of accident investigations and previous studies, on a recent site survey of airline operations and policies conducted at a representative sample of commuter airlines, and on information obtained from a public forum on commuter airline safety convened by the NTSB.

The findings of the study relevant to this rulemaking are as follows:

(1) The commuter air carrier industry has experienced major growth in passenger traffic and changes in its operating characteristics since 1980. There has been a trend toward operating larger, more sophisticated airplanes, and many carriers have established code-sharing arrangements with major airlines. The regulations in part 135 have not kept pace with many of the changes in the industry.

(2) Pressure on part 135 pilots to accomplish several tasks, such as obtaining weather information,

calculating minimum fuel load, and calculating weight and balance, between flights in short periods of time increases the risk of critical mistakes that could jeopardize the safety of flight.

The key NTSB recommendations based on these findings are to revise the FAR such that:

- All scheduled passenger service conducted in airplanes with 20 or more passenger seats would be conducted according to the provisions of 14 CFR part 121.
- All scheduled passenger service conducted in airplanes with 10 to 19 passenger seats would be conducted in accordance with 14 CFR part 121, or its functional equivalent, wherever possible.

The FAA published all of the NTSB recommendations in the **Federal Register** and requested public comments on the recommendations (59 FR 63185, December 7, 1994). Thirty-nine comments were received. Commenters included small air carriers, trade associations, aircraft manufacturers, airport operators, and individuals.

Of the comments relevant to this rulemaking, most generally support expanding the operational rules of part 121, except for flight time limitations, to commuter operations under part 135. Several commenters express concern about specific requirements that might apply. Commenters had considerable reservations about applying certain part 121 equipment requirements to smaller airplanes. The FAA considered all of the comments in developing this proposed rule.

III.E. Recent FAA Actions

Recently the FAA issued a number of proposed rules that would increase the safety of commuter operations under part 135. In August 1992, the FAA proposed a new part 142 that would contain certification and operating rules for training centers. The purpose of that rulemaking is to provide standardized quality pilot training for individuals, operators, and air carriers and to increase the accessibility of flight simulators and flight training devices for pilot training. (57 FR 35888, August 11, 1992.) The FAA intends to issue a final rule by May 1995.

In July 1993, the FAA proposed to amend the airworthiness standards for normal, utility, acrobatic, and commuter category airplanes by upgrading the requirements for seat restraint systems and increasing the downward inertia load factor for items of mass within the cabin. The proposal also would upgrade the flammability standards for seat cushions in airplanes used by commuter operators. These proposed amendments would improve the occupant protection provisions for these types of airplanes and would provide seat restraint requirements and flammability standards commensurate with those for transport category airplanes. (58 FR 38028; July 14, 1993) The FAA received an additional report on commuter airplane accident data analysis in October 1994. Based on the fact that General Aircraft Manufacturers Association had requested additional information be made available before the NPRM was published, a notice to reopen the comment period was issued October 28, 1994, and published November 4, 1994. The reopened comment period closed March 4, 1995.

In December 1994, the FAA proposed to revise the training and qualification requirements to require certificate holders that conduct commuter operations under part 135 with airplanes requiring two pilots or having 10 or more passenger seats to comply with the part 121 training, checking, and qualification requirements. The proposed rule would also mandate crew resource management training for pilots, dispatchers, and flight attendants in part 121. (59 FR 64272, December 13, 1994) The FAA intends to issue a final rule by mid 1995.

While these measures along with the earlier amendments to part 135 continue to make the requirements between parts 121 and 135 similar, some differences remain. Eliminating these differences would increase safety in commuter operations.

IV. The Proposal

The FAA proposes in this rulemaking to eliminate the differences in requirements for scheduled passenger operations using airplanes with a passenger-seating configuration of 10 or more. While a distinction still exists between large air carriers and on-demand air taxis, the FAA believes that the distinction should no longer be maintained for scheduled passenger operations and that all scheduled operations in airplanes with a passenger-seating configuration of 10 or more should comply with part 121 requirements. In addition, the FAA proposes that all turbojets used in scheduled passenger-carrying operations under part 135 comply with part 121 requirements regardless of seating capacity

The FAA Administrator, when prescribing safety regulations, is required by statute to consider "the duty of an air carrier to provide service with the highest possible degree of safety in the public interest." (49 U.S.C. 44701(d)(1)(A)) The FAA considers that the most appropriate way to meet this statutory mandate and to reduce the accident rate for current part 135 commuters operating airplanes with 10 to 30 passenger seats is to require scheduled passenger operations in those airplanes to meet most of the minimum requirements of part 121 that are relevant to the type of operation and size of the airplane.

Typically, the FAA revises safety regulations when specific events (such as accidents or incidents) indicate a need to raise or adjust certain standards. In most instances when standards are revised the FAA can discuss specific reasons for each change and can estimate whether each change is cost beneficial. This proposed rulemaking does not lend itself to this type of item by item justification and cost benefit analysis because it is difficult to precisely state which rule, in isolation from other rules, will prevent an accident or incident.

The numerous proposed revisions that would result from requiring affected part 135 commuter operators to comply with most part 121 requirements cannot readily be evaluated according to specific accidents that would be prevented. The FAA is proposing to apply much of the part 121 requirements on affected part 135 commuters because the agency believes that for those commuters the part 121 approach is appropriate for the type of operations these affected commuters conduct and that the part 121 approach to safety will reduce the accident rate for those operators. The proposed revisions cumulatively would increase the level of safety by requiring certain improvements in flightcrew qualifications, cabin safety equipment and cabin materials, airplane preformance requirements, aircraft operational control, and aircraft maintenance. Some proposed requirements would be simply a necessary part of the overall revision. For example, compliance with the manual requirements of part 121, which are similar to the requirements for affected commuters in part 135, would necessitate developing, producing, and distributing new manuals to reflect the many operational changes that would result. A dispatch system, for example, would require numerous manual changes. Compliance with the manual requirements simply reinforces many safety requirements found elsewhere. It also sets forth the operator's approved procedures for dealing with various situations. The impact of such a change cannot be evaluated separately in terms of accidents prevented, but manual

changes are an essential part of changing a part 135 operation to a part 121 operation.

Other revisions, such as requirements for certain cabin safety equipment and materials, are cumulative; that is, each requirement works as part of the overall change to increase the survivability rate in accidents. Increasing the safety level, including passenger survivability in accidents, is the result of many distinct requirements associated with emergency equipment, crewmember training, passenger briefing, and aircraft interior design. Over time, these improvements in cabin safety have saved many lives, prevented injuries, and prevented damage to property, though it would be almost impossible to determine how many lives have been saved or injuries prevented by any specific requirement. The basic justification for many of these requirements is that they make sense if the goal is to get passengers out of an accident alive.

The same is true for many of the proposed revisions in this rulemaking. The overall approach to regulating under part 121 has proven to provide the highest level of safety in air transportation in the world. Therefore, wherever feasible and logical, the FAA proposes to apply the part 121 approach to the affected commuters in order to increase safety in these operations. Because the accident rate for part 135 commuters using aircraft configured with 10–30 seats is .33 per 100,000 departures, these proposed changes will yield safety benefits that outweigh costs even if the rule is only 75% effective.

V. Major Issues [See Table 1]

In the development of this rulemaking, the FAA addressed several major issues. One of these issues is applicability, the question of where to draw the dividing line for commuter operations. Currently scheduled passenger-carrying operations in airplanes with a passenger-seating configuration of more than 30 seats must comply with part 121 requirements. Commuter operations under part 135 include scheduled passenger-carrying operations in airplanes of 30 seats or less. While this proposal is drawing the part 121 dividing line at scheduled passenger-carrying operations using airplanes having a passenger-seating configuration of 10 or more, it can be argued that all passenger-carrying airplane operat ons under part 135, including on-demand air taxi operators, should meet the safety requirements of part 121. Another major issue is aircraft type certification. Some of the airplanes being affected by this rulemaking are type certificated under part 23 requirements for commuter category airplanes (or earlier versions—SFAR 23 or 41), which are in some respects less stringent than the requirements in part 25 for transport category airplanes. The issue is whether all airplanes used by affected commuters should be type certificated under part 25 as transport category airplanes, so that at some point in the future only part 25-certificated airplanes could be used in scheduled passenger-carrying operations. The FAA also considered several issues connected with operational safety. These issues include airmen qualifications, crew flight time requirements, the need for dispatch systems, and compliance with safety equipment requirements. The FAA also considered the issue of operating into and out of airports that do not meet part 139 (Certification and Operations: Land Airports Serving Certain Air Carriers) requirements.

TABLE 1.—SUMMARY OF MODIFICATIONS CONSIDERED

Effective date of required upgrade is as stated, measured from the rule publication date	Upgrade will apply to all airplanes including new and future certificated		Upgrade will apply to newly manufactured and future certificated airplanes	Upgrade will apply to future certificated airplanes
Issue/Requirement	W/I 12 months	W/I years (#)	After years#	After 3/24/95
1. Passenger Seat Cushion Flammability		2		
2. Cargo and Baggage Compartments			4	
3. Fuel Tank Access Covers				Yes.
4. Lavatory Fire Protection		2		
5. Access to Emergency Exits				Yes.
6. Ditching Emergency Exits		2		
7. Two-discharge Fire Extinguishers				Yes.
8. Damage Due to a Failed Prop. Blade				Yes.
9. Bird Strike Damage				Yes.
10. Flammability of Interior Materials			4	
11. Dynamic Seat Testing				Yes.
12. Floor Proximity Lighting		2		
13. Redundant Control Systems				Yes.
14. Exterior Emergency Exit Markings	Yes			
15. Separation of Pitot Tubes				Yes.
16. Pitot Heat Indication System		4		
17. Landing Gear Aural Warning		2		
18. Takeoff Warning System			4	
19. Self Locking Nuts, Fasteners				Yes.
20. Dual Control System				Yes.
21. Reinforcement Near Propellers				Yes.
22. Exterior Emergency Lighting		2		
23. Emergency Exit Handle Illumination		2		
24. Performance & Obs. Clearance	Yes			
25. Accelerate-stop Requirements	Yes			
26. First Aid Kits-new req., 10–19 Pax	Yes			
27. Emergency Medical Kits, 20–30 Pax	Yes			
28. Wing Ice Light	Yes			
29. Fasten Seat Belt Light	Yes			

TABLE 1.—SUMMARY OF MODIFICATIONS CONSIDERED—Continued

Effective date of required upgrade is as stated, measured from the rule publication date	Upgrade will apply to all airplanes including new and future certificated		Upgrade will apply to newly manufactured and future certificated airplanes	Upgrade will apply to future certificated airplanes
Issue/Requirement	W/I 12 months	W/I years (#)	After years#	After 3/24/95
30. Third Attitude Indicator	Yes			
31. Airborne Weather Radar	Yes			
32. Protective Breathing Equipment		2		
33. Single Point Inertial Harness			1	
34. Cabin Ozone Concentration	Yes			
35. Retention of Galley Equipment	Yes			
36. Transponders	Yes			
37. Cargo in Pax Compartment	Yes			
38. Two Landing Lights				Yes.

V.A. Applicability

The FAA is proposing that in addition to the operations already covered by part 121, those requirements would apply to all scheduled passenger-carrying operations for compensation or hire in airplanes with a passenger-seating configuration of 10 or more seats and to all scheduled passenger-carrying operations for compensation or hire in turbojet-powered airplanes regardless of seating capacity. (Throughout this document operators of those airplanes may be referred to as "the affected operators" or "the affected commuters" or words to that effect.) The proposed dividing line would bring most commuter operations now conducted under part 135 into part 121. There are scheduled operations using airplanes of less than 10 passenger seats conducted under part 135 but they typically occur in geographic areas such as Alaska and Hawaii where air transportation is virtually the only feasible mode of transportation and where the operational environment is unlike other air transportation environments. They typically are short-haul operations often carrying only four to six passengers. They resemble air taxi operations more than commuter operations even though the flights are scheduled.

The NTSB, as stated earlier in this preamble, recommends that the FAA revise the regulations so that all scheduled passenger service in airplanes with 20 or more passenger seats be conducted under part 121 and that scheduled passenger service conducted in airplanes with 10 to 19 passenger seats be conducted under part 121 or its functional equivalent wherever possible. This proposal is in line with the NTSB recommendation. While all certificate holders operating airplanes in scheduled passenger-carrying operations with a 10 or more passenger seat configuration would come under part 121, if compliance with certain requirements would not be feasible for certain airplanes, the proposed rule would provide an exception or appropriate alternate standards. (All significant exceptions are specifically covered in the subpart discussion of this preamble.)

The proposed rule would also change the definition of "scheduled." The frequency of operations test of five round trips per week would be eliminated. For a discussion of this issue, see the part 119 discussion in section VI.A of this preamble.

All turbojets used in scheduled passenger-carrying operations, regardless of the seating configuration, would be moved over to part 121 because the typical type of operation of these airplanes warrants a higher safety standard. The FAA believes that currently no turbojets are being used in scheduled passenger-carrying operations under part 135 and that this part of the proposed applicability would not affect any current operator. The FAA seeks comments on whether any turbojets are being operated in scheduled passenger-carrying operations under part 135 and would be affected by this rulemaking.

On-demand air taxi operations are not being included in the proposal because these operations are unlike commuter or major air carrier operations. In addition, the NTSB recommendations and the accidents that spawned this rulemaking involve only commuter operations. Any part 135 certificate holder who conducts on-demand operations could be authorized to conduct its operations under certain part 121 rules [see proposed section 119.21(c)].

Single-engine airplanes are not included in the proposed rule because part 121 applies only to multiengine airplanes. Single-engine airplanes would continue to operate under part 135 whether scheduled or not. However, part 135 would apply to scheduled passenger-carrying operations with airplanes with a seating capacity of 9 or less passenger seats. Therefore, single-engine airplanes with a seating capacity of more than 9 passenger seats would also be prohibited from conducting scheduled operations under part 135. In effect, this rulemaking would require single-engine airplanes with 10 or more passenger seats now operated in scheduled passenger-carrying operations under part 135 to reduce the passenger-seating capacity to 9 or less. Single-engine airplanes that are used in nonscheduled operations in common carriage may continue to operate under the on-demand rules of part 135.

The primary impact on the use of single engine-airplanes would be on operations in Alaska. The FAA specifically requests comments on the potential impact on Alaskan operations. Comments should contain as much factual information as possible and should address possible alternative requirements where the commenter believes that this proposal would cause unjustified limitations on current airplane operations in Alaska.

Rotorcraft operations would remain under part 135; however, additional standards for scheduled passenger-carrying rotorcraft operations may be considered at a future date. Also, additional standards for on-demand air taxi operations may be considered in the future.

V.B. Aircraft Certification

Airplanes operated under part 121 are type certificated under part 25 (or a predecessor or are subject to special airworthiness requirements in part 121),

which specifies airworthiness standards for transport category airplanes. Those airplanes operated under part 135 that have a passenger-seating configuration of 20 to 30 seats are also type certificated under part 25. Other airplanes operated under part 135 are permitted to be type certificated under part 23, which specifies airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. Airplanes operated under part 135 and having a passenger-seating configuration of 10 to 19 seats are type certificated under the commuter category airworthiness standards of part 23 (or a predecessor to commuter category airplanes, e.g., SFAR 23, SFAR 41). To be type certificated under the normal category of part 23, the airplane must have a maximum certificated takeoff weight of less than 12,500 pounds. Nothing prohibits a manufacturer from type certificating a 10- to 19-seat airplane under part 25.

An applicant for type certification of a turbopropeller-powered airplane with a passenger seating capacity of 19 or less passenger seats has the option of requesting type certification in either the commuter category under the provisions of part 23 of the FAR or the transport category under the provisions of part 25 of the FAR. Commuter category type-certification standards differ in some areas from the corresponding transport category type-certification standards. In some of those areas, airplanes with a passenger seating capacity of 19 or less passenger seats can achieve the same level of safety without full compliance with the standards of part 25 because of their size, airspeed, or other pertinent parameters.

In the interest of establishing a common approach for all airplanes with 10 or more passenger seats used in scheduled passenger-carrying operations under part 121, the FAA proposes to amend part 121 to require all airplanes for which an application for type certification is made after March 24, 1995, including those with 10- to 19-passenger seats, to be type certificated in the transport category if they are operated in scheduled passenger operations. In order to ensure that this proposed change would not place any undue burden on an applicant for type certification of airplanes that could otherwise be type certificated in the commuter category, the FAA plans to review the standards of parts 23 and 25. If it is determined that the level of safety intended by part 25 could be achieved for those airplanes with 19 or fewer passenger seats through compliance with a particular standard of part 23 in lieu of the corresponding standard of part 25, part 25 would be amended to offer the part 23 standard as an option. Areas identified for further review in this regard include:

§ 25.21(f) Measurement of wind 10 meters above the surface,
§ 25.251 Vibration and buffeting,
§ 25.361 Engine torque,
§ 25.812(b) Exit sign size, and
§ 25.812(l) Inoperative lighting.

The FAA specifically requests comments concerning the above subjects and standards of part 23 commuter category that could be considered as optional standards for part 25. It must be emphasized that any standard adopted as an option must achieve the same level of safety as that currently intended by part 25. Although this study is prompted by the 10- to 19-passenger airplanes that would be operated under part 121, any changes made to part 25 in this regard would apply to type certification of each 10- to 19-passenger airplane in the transport category. Any changes to part 25 that are deemed appropriate would be the subject of a future notice of proposed rulemaking.

The FAA also proposes that airplanes configured with 10- to 19-passenger seats already in service or manufactured in the future under an already existing part 23 commuter category type certificate would have to comply with certain performance and equipment requirements in part 121. Some of these part 121 requirements would be based on part 25 requirements. The FAA proposes specific compliance dates, recognizing that for some airplanes the cost of retrofitting may result in discontinuing use of the airplane and replacing that airplane with a part 25 certificated airplane.

V.C. Flight Time Limits and Rest Requirements

Subpart Q of part 121 establishes the flight time limits and rest requirements for flight crewmembers used by domestic air carriers. Flight time limits and rest requirements for flight crewmembers used by flag and supplemental operators are established in subparts R and S, respectively. The comparable limits in part 135 are in subpart F.

In 1985 (50 FR 29319; July 18, 1985), the FAA issued changes to the flight time limitation and rest requirements in parts 121 and 135. These changes clarified and improved the flight time limits and rest requirements in part 121 for domestic operations and for the first time established cumulative weekly, monthly, and annual flight time limitations in part 135. The flight time limitations for scheduled operations under part 135 are less restrictive than those for domestic part 121 operations. Currently under part 121, domestic flight time limits (§ 121.471) are 1,000 hours per calendar year, 100 hours per calendar month, and 30 hours in any consecutive 7 days. Flag flight time limits (§ 121.481) are 1,000 hours per 12-calendar-month period, 100 hours per calendar month, and 32 hours in any 7 consecutive days. Under part 135 (§ 135.265), scheduled passenger-carrying operations must comply with flight time limits of 1,200 hours per calendar year, 120 hours per calendar month, and 34 hours in any 7 consecutive days.

For comparison purposes:

121 domestic	121 flag	135
1,000	1,000	1,200
100	100	120
30	32	34

At the time these rules were issued, the FAA believed that the less restrictive cumulative flight time limits of part 135 were acceptable because part 135 operators had not previously had any cumulative limitations and the less restrictive limits allowed for some flexibility for operations that necessitated more flight hours during peak seasons.

There is no longer a justification for the difference in cumulative flight time limits between commuter operations conducted under part 121 and those conducted under part 135. Both types of operators are conducting similar types of operations in similar environments. In some instances the same operator is flying operations under both parts 121 and 135 and applying the less restrictive flight time limits for its part 135 operations. The only significant differences are in the size of the airplanes and the number of passengers, differences that do not justify less restrictive flight time limits for crewmembers.

Therefore, the FAA proposes that the part 121 domestic flight time limits and rest requirements would apply to affected commuter operators when conducting operations within the United States. Affected commuter operators when conducting operations to or from the United States would comply with the flag flight time limitations and rest requirements of subpart R.

Additionally, when these operators use these same airplanes for nonscheduled operations, those airplanes would be required to comply

with supplemental flight time limitations and rest requirements of subpart S of part 121. (See the discussion under part 119 of the preamble for further information on flag and supplemental operations.)

The flight time limitations and rest requirements for flag and supplemental operations were not updated in 1985 when domestic limits were. In view of this, the FAA is developing an NPRM that it plans to issue in mid-1995 that would set forth a common approach to reduce the effects of fatigue on crewmembers in all kinds of operations under parts 121 and 135.

Section 135.261(b)(1) allows scheduled passenger-carrying operations conducted solely within the State of Alaska to comply with the nonscheduled limitations of part 135. This rulemaking does not propose to include an exception for Alaska under part 121 flight time limits. This proposal, in effect, would eliminate this option in Alaska for scheduled passenger-carrying operations of airplanes with 10 or more passenger seats. The FAA believes this is necessary because pilots in Alaska are flying in the same type of scheduled operations as pilots in other parts of the country and are subject to the same fatigue factors. The FAA does, however, recognize that Alaskan operations pose certain unique problems, and the FAA requests comments on alternatives that could be considered.

V.D. Age 60 Rule

Section 121.383 prohibits a certificate holder from using the services of any person as a pilot on an airplane engaged in operations under part 121 if that person has reached his or her 60th birthday and prohibits any person from serving as a pilot on an airplane engaged in part 121 operations if that person has reached his or her 60th birthday. Part 135 does not have any age limitation. The FAA proposes to impose one age limit on all pilots employed in part 121 operations, including those pilots currently employed in certain part 135 scheduled operations.

The Age 60 Rule, as the requirement has come to be known, has been the subject of considerable attention by the FAA, pilot groups, and others. The FAA is presently considering whether, in the interest of safety, the Age 60 rule should be maintained as is or revised to allow pilots to continue to fly in part 121 operations past their 60th birthday. If the FAA determines that it is appropriate to propose a different age limitation, it will propose to apply the revised limitation to all part 121 operations, including those commuter operations affected by this rule.

V.E. Dispatch System

Parts 121 and 135 require operators to exercise operational control over all flights conducted by the operator. Operational control is defined in 14 CFR part 1 as "the exercise of authority over initiating, conducting and terminating a flight." Operational control consists of making decisions and performing activities on a daily basis which are necessary to operate specific flights safely. These activities include, but are not limited to, crew and airplane scheduling, reviewing weather and NOTAM's (Notices to Airmen), and flight planning. Operational control systems vary according to the kind of operation, the complexity of operations, and the means of communication used to exercise operational control. Parts 121 and 135, in pertinent part, provide for three general types of operational control systems: Aircraft dispatch, flight following, and flight-locating systems.

While part 121 requires certificate holders conducting domestic and flag operations to have aircraft dispatch systems to exercise operational control of flights, part 135 does not. A certificate holder that conducts domestic or flag operations under part 121 must use a certificated aircraft dispatcher. The aircraft dispatcher in conjunction with the pilot in command (PIC), establishes the flight plan and monitors the flight from flight release to flight completion. The aircraft dispatcher provides the PIC with information on weather changes, fuel level, weight and balance, and destination airport conditions and capabilities; and, jointly with the PIC, makes decisions affecting the continuing safety of the flight. Under part 135 operations the PIC is typically responsible for these operational control functions. The following sections describe the three types of operational control in the FAR.

Aircraft Dispatch Systems. Section 121.395 requires operators subject to the flag or domestic rules of part 121 to use certificated aircraft dispatchers who, along with the PIC, under §§ 121.533 and 121.535, are jointly responsible for exercising operational control over certain aspects of flights. A PIC may not initiate or continue a flight unless both the PIC and the aircraft dispatcher controlling the flight agree that the flight can be conducted safely as planned under reported and forecast conditions The FAR require that both the aircraft dispatcher and the PIC sign a dispatch release. Section 121.463 requires that each aircraft dispatcher be familiar with all essential operating procedures for that segment of the operation over which he or she exercises dispatch jurisdiction. Before dispatching any flight, an aircraft dispatcher must be thoroughly familiar with the en route and terminal weather conditions and the status of communications, navigation, and airport facilities. Section 121.601 requires that the aircraft dispatcher provide the PIC with a preflight briefing on each of these items. An aircraft dispatcher must monitor the progress of each flight under the dispatcher's control until the flight has landed or passed beyond the dispatcher's area of control or until the dispatcher is relieved by another dispatcher. Flight monitoring, at a minimum, must include monitoring the flight's fuel supply, remaining flight time, terminal weather trends, en route winds and weather, and the status of airport and navigational facilities. Section 121.99 requires that rapid and reliable two-way radio communications between each flight and the dispatcher be available at any time in the flight. Once initiated, a flight must continue to its destination as planned and in accordance with the conditions of the dispatch release unless, in the opinion of either the PIC or the dispatcher, it is unsafe to do so. In such cases, the dispatch release must be amended. Section 121.557 authorizes the PIC to deviate from the conditions of the dispatch release to the extent necessary for safety in an emergency. When the PIC exercises this authority, the regulation requires the PIC to keep both air traffic control (ATC) and dispatch fully informed of the progress of the flight.

Flight Following Systems. Operators subject to part 121 supplemental rules (charter operations, all-cargo operations, etc.) are not required to have dispatch systems because such systems are impractical for operators who do not fly to the same destinations on a scheduled basis. Section 121.537 requires operators who are subject to the supplemental rules of part 121 to place the major responsibility for operational control of flights with the director of operations. The director of operations may delegate authority for the control of the flight to other employees (known as flight followers). Flight following personnel are not required to be certificated aircraft dispatchers. Under a flight following system, PIC's are responsible for preflight planning and for the safe conduct of the flight. A PIC may not begin a flight unless the PIC is thoroughly familiar with reported and forecast weather conditions on the route

to be flown and has obtained all available reports on airport conditions and irregularities of navigation facilities that may affect the safety of the flight. A flight release specifying the conditions under which the flight will be conducted is prepared and signed by the PIC before the flight may depart. Section 121.597(b) prohibits the PIC from signing the release until the director of operations or the flight follower, if delegated the authority, concurs that the flight can be safely conducted as planned. During the flight the PIC must obtain any additional available information on meteorological conditions and navigational and airport facilities that may affect the safety of the flight. The operator is responsible for ensuring that the PIC has the means to obtain this information. The operator is not required to provide the capability for inflight radio communications between the director of operations or flight follower and the PIC. The director of operations is responsible for monitoring the progress of each flight from its point of origin to its arrival at the destination.

Flight Locating Systems. While § 135.77 requires that each operator exercise operational control, part 135 does not specify a particular means of exercising continuous operational control of all aspects of the flight. Since part 135 operations range from visual flight rule operations in simple airplanes to extended overwater operations in jet transport airplanes, the regulations allow the operator to use a means that is appropriate to the operating conditions. Part 135 does not require operators to prepare a formal release authorizing a specific flight. Section 135.69 requires that the operator restrict or suspend operations when either the PIC or the operator becomes aware of a hazardous condition. The operator's manual must provide for adequate briefing and trip planning procedures to ensure that all safety requirements are fulfilled. Part 135 operators commonly delegate release authority to PIC's. Section 135.79 requires that each operator maintain at least a flight locating system for those flights for which an FAA flight plan is not filed. The system must provide for the timely notification of an FAA facility or a search and rescue facility if an airplane is overdue or missing. Part 135 operators may require PIC's to file ATC flight plans as a means of complying with this requirement. Part 135 operators are not required to have the capability to contact flights while they are airborne. Part 135 does not specify the qualifications or titles of individuals authorized to release or follow flights.

FAA Dispatch Proposal. For scheduled passenger-carrying operations, the safest means for maintaining operational control is an aircraft dispatch system. This allows for information relevant to the flight to be accessed and passed on to the pilot throughout the flight. It also provides the pilot with verification of pilot calculations related to weight and balance, fuel load, etc., since these detailed calculations are also performed by the aircraft dispatcher. Weather changes en route, airport and airport facility, and other essential information is made available to the pilot through the dispatcher. If an inflight emergency occurs, the pilot and the dispatcher can communicate on the safest measures to follow.

While the safety benefits of a dispatch system are significant, there is substantial cost involved in establishing a dispatch system because dispatchers must be hired and trained and dispatch centers and equipment must be available for communicating. In addition, some part 135 operators who would be subject to part 121 requirements as a result of this rulemaking already use an aircraft dispatch system.

The Congressional hearings on commuter operations included presentations directly related to requiring dispatchers for commuter operations conducted under part 135. Arguments for part 135 dispatchers included the following: (1) NTSB said that a lack of direct management oversight and inexperienced crews may have contributed to some part 135 commuter accidents and that a dispatcher may provide an additional safety enhancement; (2) the Airline Dispatchers Federation (ADF) said that dispatchers can prevent accidents by assisting the pilot with preflight planning and providing safety information throughout flights. ADF added that using dispatchers would not be costly because carriers would save fuel. They also said that sufficient staff may already exist to handle dispatcher duties. ADF representatives testified that pilots should fly the airplane and let dispatchers take over some of the traditional pilot workload (e.g., flight planning to include fuel planning, weather checks, weight and balance calculations).

Contrary to ADF's suggestion about dispatchers taking over some of the pilots' work load, the FAA believes that, although the aircraft dispatcher initially performs certain calculations, the pilot is still required to check the dispatcher's calculations before flight. The redundancy of the dispatch system provides assurance that the calculations are accurate. This is especially important in fast turn-arounds, common in commuter operations.

The NTSB safety study on commuter airline safety (as cited earlier) reports that for 20 commuter airlines that were surveyed: 4 provide licensed dispatch services (these 4 also conduct part 121 scheduled operations); 16 provide weather information to the pilot at each station through computerized services, station agents, or ramp personnel; at 19 airlines, the pilots calculate weight and balance for each flight; and at 11 airlines, the pilots are responsible for calculating the minimum fuel load for each flight.

The NTSB found that pressures on part 135 pilots to accomplish several tasks—such as obtaining weather information, calculating minimum fuel load, and calculating weight and balances—between flights in short periods of time increase the risk of critical mistakes that could jeopardize safety.

Pilot responses to questions in the survey about dispatch services and comments made during a public forum conducted by NTSB indicated that it was extremely difficult for the pilots to accomplish the tasks correctly in the amount of time they had during turn-arounds. Pressure to perform the tasks rapidly is most extreme for newly employed captains and first officers who are concerned that their performance evaluations will suffer if they are responsible for flight delays. Pilots reported that they would feel more confident if their weight and balance and fuel calculations were verified by a trained and licensed dispatcher.

The NTSB safety study recommendations include requiring principal operations inspectors to periodically review air carrier flight operations policies and practices concerning pilot tasks performed between flights to ensure that carriers provide pilots with adequate resources (such as time and personnel) to accomplish those tasks. (NTSB recommendation A–94–193)

To correct these identified problems, the proposed rule would require all affected commuters to meet all part 121 dispatch requirements, including dispatcher qualification requirements, recordkeeping, and flight release requirements. Affected commuters who would conduct some nonscheduled flights under part 121 supplemental rules could use a flight following method for the nonscheduled flights.

The FAA does, however, recognize that Alaskan operations pose certain unique problems, and the FAA requests comments on alternatives that could be considered.

V.F. Major Equipment Items

Part 121, subpart K, contains certain equipment requirements for airplanes operated under that part. Some of these items of equipment are considered major because they are relatively costly to buy and install and they provide major safety benefits. These items include flight data recorders (§§ 121.343 and 135.152), traffic alert and collision avoidance system (§§ 121.356 and 135.180), airborne weather radar (§§ 121.357 and 135.173), low altitude windshear (§ 121.358), and cockpit voice recorders (§§ 121.359 and 135.151). Of the above items, airborne weather radar is the only equipment requirement that would be added for 10- to 19-passenger-configurated airplanes under this proposal. Each major equipment requirement affected or not affected by the proposed rule is discussed below.

Flight Data Recorders (FDR). FDR are required in part 121 for all large airplanes. Stated simply, the regulations require operators to equip certain airplanes at specified times with digital FDR that have 6, 11, or 17 data parameters depending on the date of type certification or manufacture of the airplane. FDR are required in part 135 for multiengine turbine-powered airplanes with a passenger-seating configuration of 10 to 19 seats that were brought on to the U.S. register after October 11, 1991. This means that airplanes manufactured after that date or brought into the country and registered after that date must have FDR, but airplanes previously registered do not have to be retrofitted with FDR. Airplanes having a passenger-seating configuration of 20 or more seats must be equipped with FDR no matter when they were registered.

FDR are an essential tool for determining the causes of airplane accidents. As cockpit technology has advanced FDR have been developed to capture more information on the flight characteristics of an airplane and thereby yield more helpful information in determining the causes of accidents.

Concurrent with this rulemaking, the FAA had determined that the FDR regulations in part 121 need to be updated to address technological advances in airplanes and FDR equipment. The FAA had made a preliminary decision to issue a proposal on FDR in the near future. Subsequent to its review, the NTSB, on February 22, 1995, issued three recommendations concerning FDR changes, and a public meeting is scheduled for April 20, 1995. In light of these developments, it would not be prudent to require affected operators to comply with current part 121 requirements at this time. This proposal would therefore maintain the status quo on FDR requirements, pending future rulemaking.

Traffic Alert and Collision Avoidance System (TCAS). Both parts 121 (§ 121.356) and 135 (§ 135.180) require TCAS. Section 121.356(a) requires TCAS II with an appropriate class of Mode S transponders for airplanes with more than 30 seats. Section 121.356(b) requires passenger or combination cargo/passenger airplanes with seating configurations of 10 to 30 seats to have an approved TCAS by December 31, 1995 (59 FR 67584; December 29, 1994).

In both part 121 and part 135, a TCAS II System installed in a 10- to 30-seat airplane must be capable of coordinating with TCAS units that meet TSO C–119.

Section 121.356(c) requires that the manuals required by § 121.131 shall contain certain information in the TCAS II System. Section 135.180(b) has a similar requirement stating that the flight manual required by § 135.21 shall contain certain information on TCAS I.

Since the requirements for 10- to 30-seat airplanes are substantially the same, affected commuters would be able to comply with the part 121 requirements. The manual requirements in part 121 would be updated to apply to TCAS I as well as TCAS II.

Airborne Weather Radar. Section 121.357 requires an approved airborne weather radar on all transport category airplanes. Part 135 has requirements identical to part 121 for large transport category airplanes in passenger operations (§ 135.175), but part 135 requirements are less restrictive for airplanes with a passenger-seating configuration of 10 to 19 seats (that is, nontransport category) (§ 135.173). These airplanes may have either airborne weather radar or airborne thunderstorm detection equipment. Both parts 121 and 135 contain exceptions for operations in the states of Hawaii and Alaska and parts of Canada.

While most commuters operating under part 135 probably have airborne weather radar, some of the 10- to 19-passenger-seat airplanes may not. Airborne weather radar provides a higher level of safety than thunderstorm detection equipment because it provides pilots with a more accurate presentation of the relative location and distance of potentially severe weather conditions. Radar may be tilted up or down to show the maximum tops of thunderstorm areas and may be adjusted to display the relative density and strength of the area of potentially severe weather. With radar in an aircraft it is feasible to maneuver safely through an unanticipated entrance into severe weather conditions.

This proposal would require all affected operators to have airborne weather radar on their airplanes.

Low-Altitude Windshear. Low-altitude windshear equipment provides a warning to the flightcrew if windshear is in the area and provides guidance for avoiding windshear. Section 121.358 requires low-altitude windshear equipment on turbine-powered airplanes. The definition in § 121.358(d)(1) for turbine-powered excludes turbopropeller-powered and piston-powered airplanes. Part 135 does not require low-altitude windshear equipment. Both part 121 and part 135 (§§ 121.404 and 135.10) require windshear training for crewmembers; part 121 requires ground and flight (simulator) training while part 135 requires ground training.

The proposed rule would not require low-altitude windshear equipment for turbopropeller-powered or piston-powered airplanes since these airplanes are already excluded under the part 121 definition. The performance characteristics of these airplanes make them better able to escape from an inadvertent windshear encounter. The turbopropeller engines and straighter wings of these airplanes enable lift and acceleration to be more immediately applied, thus making the airplanes better able to escape from inadvertent windshear encounters.

If any turbojet-powered airplane is being used in scheduled passenger-carrying operations under part 135, it would have to comply with the part 121 low-altitude windshear equipment requirements. The FAA requests information on any operator who would be affected by this requirement.

Cockpit Voice Recorders (CVR). CVR provide accident investigators with information about the flight which helps to determine the cause of an accident or incident and thereby helps to prevent future accidents.

Section 121.359 requires CVR on all large turbine-engine-powered airplanes and on large pressurized airplanes with four reciprocating engines. Section 135.151(a) requires one standard of CVR on all multiengine turbine-powered airplanes or rotorcraft having a passenger-seating configuration of six or more and for which two pilots are required by type certification, and § 135.151(b) requires another standard

for all multiengine turbine-powered airplanes or rotorcraft having a seating configuration of 20 or more seats.

The proposed rule would not change current CVR requirements. These standards, updated in 1988, continue to be appropriate to the types of operations involved. The requirements now in part 135 for 10- to 19-seat airplanes would be incorporated into part 121 under the proposed rule.

V.G. Airports

Section 121.590 requires that no air carrier or pilot conducting operations under part 121 may operate an airplane into a land airport in the U.S. (or territory, etc.) unless the airport is certificated under 14 CFR part 139. Section 135.229 states that no certificate holder may use any airport unless it is adequate for the proposed operation.

Part 139 prescribes regulations governing the certification and operation of land airports that are served by any scheduled or nonscheduled passenger air carrier operating airplanes with a seating capacity of more than 30 passengers. Therefore, part 135 commuter operators may use airports that are not FAA certificated.

Part 139 contains requirements for aircraft rescue and fire fighting equipment, airport guidance signs, airfield inspection procedures, airport staff training, airfield discrepancy reporting (Notices to Airmen), airfield pavement maintenance standards, emergency plans, snow and ice control plans, and runway and taxiway standards.

The statutory authority for the FAA to certificate airports, as specified in 49 U.S.C. 44706(a), limits that authority to an airport "that serves an air carrier operating aircraft designed for at least 31 passenger seats." The NTSB has recommended that the FAA seek legislative expansion of the statute to include in the Airport Certification Program all airports served by air carriers that provide scheduled passenger carrying service and revise part 135 to permit scheduled passenger operations only into airports certificated under the standards in part 139.

In response to the NTSB recommendation, the FAA in conjunction with the Department of Transportation, is proposing legislation which would grant the agency the authority to certificate any airport which receives scheduled service by an air carrier utilizing airplanes designed for 10 or more passenger seats. If approved, this legislation would add approximately 200 airports to the FAA's airport certification program.

Until such legislation is enacted, according to the proposed rule, affected commuters would be permitted to operate into other than part 139 certificated airports. Should the FAA receive expanded authority over airport certification, the FAA would, through rulemaking, propose standards that are sufficiently flexible to cover the range of airports presently served under part 135. These standards could not, in all cases, be at the level currently required under part 139 for part 121 operations.

In anticipation of receiving the necessary legislative authority, the FAA has proposed a task to the Aviation Rulemaking Advisory Committee (ARAC). The task requests ARAC to recommend what requirements in part 139 should be applicable to these airports. In making these recommendations ARAC is to consider accepted industry practices regarding airport safety, personnel available at these airports, costs associated with meeting these requirements (e.g., capital, operating, and maintenance costs), and the types of accidents/incidents that have occurred at these airports. The ARAC task allows all segments of the industry the opportunity to provide input into this effort at the earliest stages and will serve as the basis for rulemaking if the legislative authority is granted.

V.H. Proposed Effective Date and Compliance Schedule

The FAA proposes an effective date of 30 days and a general compliance date of 1 year. The FAA also proposes delayed compliance dates for certain actions as listed below. Proposed §§ 121.2 and 135.2 set out the compliance schedule and an accelerated compliance option, as discussed below.

Under the proposal, affected operators would comply with each requirement in part 121 unless an exception is provided in part 121. Therefore, it is important for affected operators to examine and comment on the potential impact on their operations of every part 121 requirement and not just those requirements specifically discussed in this NPRM.

It is the FAA's intention that if a final rule is adopted as a result of this NPRM, the final rule would be published not later than December 31, 1995, and that within 1 year of that date, that is, by December 31, 1996, all affected operators that have air carrier certification or operating certificates issued under part 135 at the time of publication would have completed the approval process and obtained new operations specifications giving them authority to conduct domestic or flag operations under part 121.

Under this proposal, persons who submit applications for or obtain air carrier certificates or operating certificates after 30 days after the effective of the final rule would be required to obtain part 121 operations specifications; however, these new entrants would meet the same requirements as the affected commuters, i.e., delayed dates for compliance and retrofit.

The FAA proposes longer compliance dates than the proposed 1-year general compliance date for some equipment requirements. These requirements, which fall into two categories, retrofit requirements and requirements for newly manufactured airplanes, are explained later in the preamble under the applicable part 121 subpart and are set out in proposed §§ 121.2 and 135.2 (these two sections are identical). In each case, the FAA has calculated the compliance time in consideration that, even if each of the retrofits were to be started immediately, it would take considerable time to accomplish them fleet-wide. Factors that mitigate for a period longer than one year include:

- The necessity for redesign of approved structures and systems, and the extent of those redesigns.
- The requirement to test such redesigns, including the effect of the redesign on other systems.
- The availability of FAA resources for witnessing tests and for making findings of compliance.
- The labor and airplane downtime necessary to accomplish the retrofits.
- The availability (or lack thereof) of appropriate materials and parts, and qualified designers and installers. The short lead times from suppliers and other entities not subject to direct control of operators are also relevent, especially since affected operators may be competing for the same resources.
- The effect of achieving compliance of other requirements that would be imposed by this or other rulemakings. (For example, the compliance period for the proposed requirements for flammability for compliant seat cushions and flotation-capable seat cushions would coincide.)

The longer compliance times are summarized as follows:

Two-year retrofit period. The following would require to be retrofitted within 2 years after the publication date of the final rule:

- Landing gear aural warning device (§ 121.289).
- Ditching emergency exits requirements in § 25.807(e) (§ 121.293(a)).

• Lavatory fire protection (§ 121.308).

• Floor proximity lighting, emergency exit handle illumination, and interior and exterior emergency lighting (§ 121.310 (c), (d), (e), and (h)).

• Passenger seat cushion flammability and flotation (§§ 121.312(c) and 121.340).

• Protective breathing equipment (§ 121.337(b)).

For example, compliance with the lavatory fire protection requirements would include redesigning existing lavatories to incorporate automatic fire extinguishers and other hardware, where none had existed before. In attempting to comply with the passenger seat cushion requirements, affected operators may end up competing for suppliers' cushion materials. The incorporation of PBE equipment in cockpits, where space may be scarce, may necessitate design compromises that must be carefully evaluated.

Four year retrofit. The following would be required to be retrofitted within 4 years after the publication date of the final rule:

• Pitot heat indication system (§ 121.342).

Additional factors may mitigate for proposing requirements to apply only to newly manufactured airplanes. In addition to consideration of the extent of redesigning and replacing existing systems and structures, the need to revise and re-tool manufacturing processes frequently will be relevant.

Newly manufactured within 1 year. The following would be required of newly manufactured airplanes operated in scheduled service 1 year after the publication date of the final rule:

• Safety belts and shoulder harnesses (§ 121.311(f)).

Compliance with this requirement would mandate that use of each belt and harness system, when buckled, allows each flight crewmember to perform their duties, including reaching controls on the flight deck; this may entail a redesign to ensure the proper crewmember-to-control interface.

Newly manufactured within 4 years. The following would be required of newly manufactured airplanes operated in scheduled service 4 years after the publication date of the final rule:

• Takeoff warning system (§ 121.293(b)).

• Compartment interior flammability (§ 121.312(a)).

• Cargo and baggage compartments (§ 121.314).

Compliance with the cargo and baggage compartment requirements, for example, would involve redesigning the airplanes to incorporate detector and extinguisher systems; in addition, new compartment liner materials would be incorporated. Compliance would likely necessitate the incorporation of redesigned mechanical, structural, and electrical systems to support the new systems. Designs and materials that have been approved for transport category airplanes may or may not "work" in other certificated airplanes; design and testing resources would be expended to confirm whether they do. Space within the fuselages of affected airplanes will likely be at a premium, thus limiting many design alternatives. The availability of (or lack thereof) design, part, and material support may be noticeably affected by competition for them among several operators.

To ensure an orderly transition to part 121 operations, the FAA proposes that a transition plan be submitted by each affected commuter within 60 days of the publication date of the final rule. Such a plan would enable operators to transition to part 121 operations efficiently and methodically, while giving the FAA the information it needs to allocate FAA inspector resources appropriately to ensure that all affected commuters receive both help and oversight as they move to part 121 operations.

Proposed §§ 121.2(g) and 135.2(g) set out the elements of the transition plan. It must contain a calendar of events and show detailed plans for obtaining new part 121 operations specifications, showing compliance with all applicable part 121 requirements, and purchasing and installing equipment within the time allowed for each equipment requirement. Specific discussion of such items as developing and implementing a dispatch system, updating manuals to meet part 121 requirements, and conducting any necessary proving tests would be included in the plan. The plan should also address how compliance with this rule would be coordinated with the implementation of the new rule requiring training under part 121, subparts N and O. (See discussion under "FAA Related Actions," above.)

The FAA requests comments on the proposed effective date and compliance schedule. The FAA encourages affected operators to achieve compliance sooner than the 1-year general compliance date and delayed compliance dates and would like to provide incentives that the FAA can reasonably provide. The FAA requests comments on possible incentives for early compliance.

VI. Discussion of Specific Proposals

VI.A. Part 119—Certification: Air Carriers and Commercial Operators: Summary

Purpose of Part 119. Part 119 is a proposed new part that consolidates into one part the certification and operations specifications requirements for persons who operate under parts 121 and 135. These regulations are currently in SFAR 38–2, which replaced the certification and operations specification requirements in parts 121 and 135 in response to the Airline Deregulation Act of 1978.

Part 119 was originally proposed in 1988 (53 FR 39853; October 12, 1988; Docket No. 25713). Based on comments received on the definition of "scheduled operation" in the NPRM, the FAA published a Supplemental Notice of Proposed Rulemaking (SNPRM) in 1993 (58 FR 32248; June 8, 1993; Docket No. 25713).

In this NPRM, the FAA is republishing the entire text of part 119 for comment because of the length of time since the first NPRM, the number of changes that have been made to the proposed text, and the significance of the changes to part 119 that are proposed as a result of this NPRM.

In this section of the preamble, changes to proposed part 119 that are the result of this NPRM are explained. Other changes to part 119 that are not related to this NPRM are discussed later in the preamble, after the discussion of the proposed changes to parts 121 and 135.

The FAA requests comments on all aspects of part 119. However, comments already received on the first NPRM and the SNPRM for part 119 will be considered before issuing part 119 as a final rule; therefore, commenters do not need to repeat statements already submitted to the FAA.

Changes to Part 119 as a Result of this NPRM. Proposed § 119.3 contains definitions for the 5 kinds of operations conducted under parts 121 and 135 (Domestic, Flag, and Supplemental in part 121 and Commuter and On-demand in part 135). The FAA proposes to move the affected commuters to part 121 by changing the definitions for "Commuter operations," "Domestic operations," and "Flag operations."

The most important change to the proposed definitions of "domestic operations" and "flag operations" is that instead of applying to airplanes with more than 30 passenger seats, the definitions would apply to airplanes with more than 9 passenger seats. However, scheduled passenger-carrying operations conducted with turbojet-

powered airplanes are defined as "domestic operations," or "flag operations," regardless of the number of passenger seats. Minor changes are also made in the part of the definitions that specifically identify which operations are considered "domestic" and "flag." "Domestic operations" generally mean operations are conducted between points within the 48 contiguous states and the District of Columbia, or between any two points within any state, territory or possession of the U.S. "Flag operations" generally mean operations conducted between any point within Alaska or Hawaii, or any territory or possession of the U.S., and any point outside the U.S., Alaska, Hawaii, or possession of the U.S.—and, any point outside Alaska, Hawaii, or any territory or possession of the U.S. Flag operations also include operations conducted between any point within the 48 contiguous states or the District of Columbia and any points outside the contiguous states or the District of Columbia.

The definition of "commuter operation" would be changed so that smaller airplanes used in scheduled passenger operations would be considered commuter—those conducted with airplanes that have 9 or less passenger seats, except for turbojet-powered airplanes, as explained above, and those that are conducted with rotorcraft, regardless of the size.

A change to the definition of "scheduled operation" may have an effect on certain operations that are not currently considered "commuter operations." Under SFAR 38–2 and as previously proposed in part 119, the only operations that are considered commuter are those 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 published flight schedules. Scheduled operations with a lesser frequency are conducted under the on-demand rules. In this NPRM, the FAA proposes to eliminate the frequency test so that an operation with as few as one scheduled flight per week would have to be conducted under either the commuter rules of part 135 (for airplanes configured with 9 or fewer passenger seats) or the domestic or flag rules of part 121 (for airplanes configured with more than 9 passenger seats). This change is being proposed so that all scheduled passenger operators would be required to follow the applicable rules, i.e., domestic, flag, or commuter. The FAA is not aware of any operations that would be affected by eliminating the frequency test and specifically requests comments on the impact of this proposed change.

The definitions of "on-demand operation" and "supplemental operation" have been rewritten to make it clearer which operations fall into these categories. They have not changed significantly from current rules or from the NPRM, except for one important difference. This NPRM does not change the basic dividing line between on-demand and supplemental operations (more than a 30-passenger-seat configuration or more than 7,500 pound payload capacity is a supplemental operation), except that if a specific airplane with a passenger-seating configuration of 10 to 30 seats is used in domestic or flag operations as a result of this rule, any nonscheduled operation conducted with that airplane must be conducted under the part 121 supplemental rules, instead of under the on-demand rules of part 135. This is necessary because an airplane must be listed in a certificate holder's operations specifications as either a part 121 or a part 135 airplane; it cannot be switched back and forth between parts without a major investment of time and resources by both the operator and the FAA. Switching between parts entails many things, including airplane conformity checks, equipment checks, and record checks.

Section 119.21 contains the regulatory roadmap that requires domestic, flag, and supplemental operations to be conducted under part 121 and commuter and on-demand operations to be conducted under part 135. (See also Table 2 for a visual aid to the operating rules that apply to different kinds of operations.) This section has been reorganized and rewritten to make it easier to follow. It contains a provision that allows commuter operations to be conducted under domestic or flag rules, if the certificate holder obtains authorization from the Administrator. Likewise, part 135 on-demand operations may be conducted under the supplemental rules of part 121, if the certificate holder obtains authorization from the Administrator.

Section 119.49, Contents of Operations Specifications, specifies all of the items that are listed in each certificate holder's operations specifications. Although no substantive changes are being proposed for this section, affected commuters should carefully review this section because they would need to obtain revised operations specifications that allow them to conduct operations under part 121. Generally, affected commuters who conduct domestic operations would need to obtain operations specifications for domestic operations, while affected commuters who operate internationally would need to obtain operations specifications for flag operations. The items included in operations specifications for commuter operations are the same as for domestic and flag operations except that, under § 119.49(a)(4), domestic and flag operations must also list provisional and refueling airports. Affected commuters would need to identify these airports for their operations.

TABLE 2.—OPERATING RULES THAT APPLY FOR DIFFERENT KINDS OF OPERATIONS

Size/weight of aircraft	Part 121 domestic (Scheduled)	Part 121 flag (Scheduled)	Part 121 supplemental (Not scheduled)	Part 135 commuter (Scheduled)	Part 135 on-demand (Not scheduled)	Part 125 (Not scheduled)
Airplanes (Common Carriage):						
≤9 seats and ≤7500 lbs	No[1]	No[1]	No[2]	Yes[1]	Yes[2]	No
10–30 seats and ≤7500 lbs	Yes	Yes	No[2]	No	Yes[2]	No
>30 seats or >7500 lbs	Yes	Yes	Yes	No	No	No
Airplanes (When common carriage is not involved):						
<20 seats or <6000 lbs	No	No	No	No	Yes	No
≥20 seats or ≥6000 lbs	No	No	No	No	No	Yes

TABLE 2.—OPERATING RULES THAT APPLY FOR DIFFERENT KINDS OF OPERATIONS—Continued

Size/weight of aircraft	Part 121 domestic (Scheduled)	Part 121 flag (Scheduled)	Part 121 supplemental (Not scheduled)	Part 135 commuter (Scheduled)	Part 135 on-demand (Not scheduled)	Part 125 (Not scheduled)
Rotorcraft:						
Common carriage and when common carriage is not involved.	No	No	No	Yes	Yes	No

[1] Turbojet-powered airplanes used in scheduled passenger-carrying operations must comply with part 121 regardless of passenger seating or payload capacity.

[2] If turbojet-powered airplanes and other airplanes with 10–30 seat configurations are used for part 121 Domestic or Flag operations, non-scheduled or charter operations with that airplane shall be conducted under part 121 supplemental rules.

Also, current FAA policy and guidance require a 121 operator to have detailed operations specifications for intended VFR operations. Part 135 is more liberal in the conduct of VFR operations allowed. FAA believes that a higher level of safety is gained by conducting operations under instrument flight rules (IFR). Therefore IFR operations are seen as the standard; VFR operations, although still allowed, would be an exception approved only through operations specifications.

Before the FAA approves an affected commuter for domestic or flag operations and issues the new operations specifications, an FAA inspector would need to review all of the certificate holder's operations and procedures to ensure that the certificate holder has made the changes necessary in its operations to comply with part 121 rules. The FAA inspector would review and approve such items as the dispatch system, revised manuals, procedures for complying with part 121 flight time and rest requirements, completion of airplane proving flights, etc. The FAA will provide guidance to the affected commuters so that they can prepare for this approval process.

Requirements for the types and qualifications of management personnel for parts 121 and 135 operations are consolidated in proposed part 119. Sections 119.65 and 119.69 contain the types of management positions required for part 121 and part 135 operations, respectively. Sections 119.67 and 119.71 specify the qualifications for individuals in those positions. Section 119.65 proposes that part 121 operations have a Director of Safety, a Director of Operations, a Chief Pilot, a Director of Maintenance, and a Chief Inspector. Section 119.69 proposes that part 135 operations have only a Director of Operations, a Chief Pilot, and a Director of Maintenance. However, § 119.65(b) contains a provision that the Administrator may approve positions or numbers of positions other than those listed above for a particular operation if the certificate holder can show that safety can be maintained with fewer or different categories of management personnel.

The FAA is proposing in § 119.65 that each certificate holder that conducts operations under part 121 must have a Director of Safety. This person would be responsible for keeping the highest management officials of the certificate holder fully informed about the safety status of the certificate holder's entire operation. In its recent survey of 21 commuter airlines, the NTSB found that the person most likely approached by pilots with safety concerns was the Chief Pilot or the Director of Operations, the persons also responsible for the day-to-day management of line operations. The FAA agrees with the NTSB that, although other management personnel should be informed and aware of safety concerns, a safety officer can be most effective when functioning independently of those with responsibility for day-to-day operations. For this reason, ideally the Director of Safety should not also be assigned to any of the other required management positions in § 119.65 (Director of Operations, Chief Pilot, Director of Maintenance, Chief Inspector), nor should the Director of Safety report to any of those positions, but should instead report to only the highest management levels at the airline. However, the FAA realizes that this could create a problem for smaller operators with fewer management level positions. The FAA invites comments on how to structure an independent safety function in airlines of different sizes and is particularly interested in responses to questions such as: Should the rules require that the Director of Safety be a separate position, totally independent of other management positions? What would be the burden of such a requirement? If, following a review of the comments received, the FAA decides to adopt a mandatory separation of function, the final rule will specifically require this.

The qualification requirements for management positions are similar for parts 121 and 135 operations, except that the qualifications for Director of Operations and Director of Maintenance are more stringent for part 121 than for part 135. Under § 119.67(a), a Director of Operations for a part 121 operation must have both 3 years supervisory or managerial experience within the last 6 years and 3 years experience as a pilot in command (PIC) of a large airplane. If the person is becoming the Director of Operations for the first time, the three years as a PIC must have been within the last 6 years. Under § 119.71(a), a Director of Operations for a part 135 operation must have either 3 years supervisory or managerial experience within the last 6 years or 3 years experience as a PIC. Again, if the person is becoming Director of Operations for the first time, the three years of PIC experience must have been within the last 6 years. Under § 119.67(c), a Director of Maintenance for a part 121 operation must have 5 years experience within the past 5 years in one or a combination of maintaining the same category and class of airplane as the certificate holder uses or repairing airplane in the same category and class of airplane as the certificate holder uses in a certificated airframe repair station.

In addition the person must have 1 year of supervisory experience in maintaining the same category and class of airplane as the certificate holder uses. Under § 119.71(e), a Director of Maintenance for a part 135 operation must have either 3 years experience within the past 3 years maintaining the same category and class of aircraft as the certificate holder uses or 3 years experience within the past 3 years repairing aircraft in the same category and class of aircraft as the certificate holder uses in a certificated airframe repair station, including 1 year in the capacity of approving aircraft for return to service. Under § 119.67(e) affected commuters who currently employ persons as Director of Operations, Director of Maintenance, or Chief Pilot who do not meet the airman, managerial or supervisory experience

requirements in proposed § 119.67 may request the Manager of the Flight Standards Division in the region of the certificate-holding district office to authorize the continued employment of those individuals. The certificate holder must be able to show that those individuals have comparable aeronautical experience that qualifies them to serve as Director of Operations, Director of Maintenance, or Chief Pilot for a part 121 operation. Proposed § 119.67(e) does not allow for a waiver of the airman certification requirements by the Managers of the Flight Standards Division for those management positions.

VI.B. Part 121 Discussion

The FAA has evaluated each requirement in part 121 to determine what effect compliance would have on affected operators. The following discussion describes (1) any proposed revisions to part 121 that would be necessary so that affected operators can comply with the requirement; and (2) any requirements that would be new or different for affected operators and that would impose a burden on the affected operators. If the FAA has determined that current part 121 and 135 requirements are identical or similar or that the change in compliance would not impose a burden, the requirements are not for the most part discussed.

Since all of part 121 would apply to affected operators unless otherwise stated in the proposed rule, each affected operator and individual should evaluate all of part 121, not only the proposed revisions, to determine how the proposed rule would affect them. The FAA invites comments on any effects of this proposed rule whether or not the requirements have been specifically addressed in this notice.

Discussion of subpart A revisions appears in the part 119 portion of the preamble. Subparts B–D would be reserved since the current substance of these subparts would be subsumed under part 119.

VI.B.1. Subpart E—Approval of Routes: Domestic and Flag Air Carriers

Section 121.97 requires all domestic and flag operators to show that each route it submits for approval has enough airports that are properly equipped and adequate for the proposed operation. They must also have an approved system to disseminate this information to appropriate personnel. Part 135 has similar requirements, but part 121 does require additional information. The FAA believes this would not have a significant impact on operators affected by this rule change.

Section 121.99 requires all domestic and flag operators to have a two-way air/ground communications system between each airplane and the appropriate air traffic control facility, along the entire route. In the 48 contiguous States and the District of Columbia, the communications system between each airplane and the dispatch center must be independent of any system operated by the United States. This would be a new requirement for the affected operators.

Section 121.101 requires each domestic and flag operator to show that enough weather reporting facilities are available along each route to ensure weather reports and forecasts necessary for the operation. For operations within the 48 contiguous States and the District of Columbia, these reports must be prepared by the National Weather Service. For other areas, a system must be approved by the Administrator. Section 135.213 has similar requirements, except the pilot in command is allowed to use various other sources, including his own weather assessment, for VFR operations. This section also requires reports of adverse weather phenomena. The FAA proposes that affected operators comply with part 121.

Section 121.107 requires each domestic and flag operator to have enough dispatch centers, adequate for the intended operation. This would be a new requirement for affected operators.

See the Dispatch System discussion in the "Major Issues" section of this NPRM for further discussion of this subpart.

VI.B.2. Subpart F—Approval of Areas and Routes for Supplemental Air Carriers and Commercial Operators

This subpart is similar to subpart E, except it applies to supplemental operations, and discusses flight following requirements. This subpart would apply in cases where an affected operator uses an airplane that is also used in domestic operations to conduct a nonscheduled operation, as discussed above in Section VI.A.—Part 119 Summary.

See the Dispatch System and Flight Following System discussion in the "Major Issues" section of this NPRM for further discussion of this subpart.

VI.B.3. Subpart G—Manual Requirements

Manual requirements: Contents and personnel: Under subpart G of part 121 certificate holders are required to prepare and keep current a manual containing policies, procedures, applicable regulations, and other information necessary to allow crewmembers and ground personnel to conduct the operations properly (see § 121.133 and § 121.135). While the requirements of parts 121 and 135 are similar, part 121 manual requirements contain a more extensive list of manual contents (§ 121.135). Under part 121 the manual or appropriate parts must also be furnished to more personnel, such as aircraft dispatchers, flight attendants, and made available to others, such as station agents. The effect of these differences between compliance with part 121 versus compliance with part 135 would be significant for commuter operators. The proposal would require developing, producing, and distributing new manuals appropriate to part 121. In addition, § 121.137 requires the air carrier to issue a manual or appropriate parts to each crewmember and requires each crewmember to keep the manual up to date and have it with him or her when performing assigned duties. Part 135 does not require that flight attendants be issued a manual; however, it does require that persons to whom a manual is issued must keep it up-to-date (see § 135.21). The FAA believes that each crewmember should have his or her own manual containing up-to-date information and regulations pertinent to the crewmembers assigned duties. For flight attendants the manual would contain information about inflight medical emergencies, airplane evacuations, water landings, and other emergencies.

Airplane flight manual. Section 121.141 requires each certificate holder to keep a current approved airplane flight manual for each type of transport category airplane that it operates and to carry in each transport category airplane either the current flight manual or the manual required by § 121.133 if that manual contains the flight manual information. Part 135 does not have a comparable requirement; however, part 135 operators currently must comply with § 91.9, which requires an approved airplane flight manual on board the airplane if that manual has been developed. All operators affected by this proposal would already have an approved airplane flight manual. The requirement under part 121 is more permissive, allowing appropriate parts of the certificate holder's manual to be developed and carried instead of the flight manual and allowing some modifications of flight manual information if they are approved by the Administrator. This action proposes to include airplanes used by affected commuters under the manual requirements of § 121.141 and the

applicability statement of the current rule would be revised accordingly.

VI.B.4. Subpart H—Airplane Requirements

Subpart H of part 121 contains airplane requirements that apply to all certificate holders operating under part 121. Section 121.153 contains general requirements (e.g., airplanes must be in an airworthy condition) that would add no additional burden to airplanes presently operated under part 135.

Section 121.157 contains type certification requirements for various types of airplanes operated under part 121. Paragraph (a) of § 121.157 contains requirements that apply to airplanes type certificated before July 1, 1942. While it is unlikely that any airplanes of this vintage are presently operating under part 135 (except possibly an occasional DC–3) these requirements would be appropriate to such operations and therefore would not be changed.

Paragraph (b) of § 121.157 states that except for C–46 type airplanes covered in paragraphs (c) and (d), no airplane type certificated after June 30, 1942 may be operated under part 121 "unless it is certificated as a transport category airplane" and meets applicable airplane performance operating limitations as specified in paragraphs (a), (b), (d), and (e) of § 121.173. Since most of the 10-to-19 passenger airplanes that would be affected by this proposal were type certificated in the commuter category (or one of the predecessors of the commuter category) a new exception to paragraph (b) is proposed as a new paragraph (e).

Paragraphs (c) and (d) of § 121.157 apply to C–46 type airplanes and would not have any impact on this rulemaking since no C–46 type airplanes are presently operating under part 135.

Current paragraph (e) of § 121.157 would be deleted because helicopters are no longer operated under part 121.

Proposed new paragraph (e) would allow nontransport category airplanes type certificated after December 31, 1964, to be operated under part 121 if they were type certificated in the commuter category or fall into one of the categories listed below (referred to as "commuter category predecessors") and meet the additional airworthiness requirements of subpart I as made applicable by the proposed amendments to that subpart:

1. Airplanes type certificated before July 1, 1970, in the normal category that meet special conditions issued by the Administrator for airplanes intended for use in operations under part 135.

2. Airplanes type certificated before July 19, 1970, in the normal category that meet the additional airworthiness standards in Special Federal Aviation Regulation No. 23.

3. Airplanes type certificated in the normal category that meet additional airworthiness standards in appendix A of part 135.

4. Airplanes type certificated in the normal category and that comply with either section 1.(a) or section 1.(b) of Special Federal Aviation Regulation No. 41.

Proposed new paragraph (f) would require that to be operated under part 121 newly type certificated airplanes (i.e., those for which an application is submitted after the publication of this NPRM) must be type certificated under part 25. For newly type certificated airplanes this change would, in effect, reinstate the requirement that airplanes operated under part 121 must be transport category airplanes. Notwithstanding this proposal, the FAA recognizes that some present requirements of part 25 may not be appropriate for all propeller-driven, multiengine airplanes with less than 20 passenger seats (present airplanes used by affected commuters). Therefore the FAA, as previously discussed, has undertaken a comparative review of parts 23 and 25 and will in the near future propose changes to part 25 as appropriate to accommodate these airplanes which would previously have been type certificated in the commuter category under part 23.

Single-engine airplanes. Section 121.159 prohibits operation of single-engine airplanes under part 121. No change to this prohibition is proposed in this rulemaking since the FAA does not consider single-engine airplanes acceptable to part 121 standards. For example, a single-engine airplane could not meet part 121 requirements, such as the one-engine-inoperative requirements of § 121.191. This section is amended to delete an obsolete reference to § 121.9.

Airplane limitations: Type of route. Section 121.161 requires that a two-engine or three-engine airplane must be within 1 hour flying time from an adequate airport at normal cruising speed with one engine inoperative. While part 135 does not contain a comparable requirement, the FAA believes that this requirement can be met by present part 135 operators with the possible exception of some Alaskan operations. Since § 121.161 contains authority for deviations if approved by the FAA (AC 120–42 contains acceptable criteria), this requirement should not impose any undue burden.

This section also requires (with some exceptions for older airplanes) part 25 ditching certification for extended overwater operations, which the FAA believes should be applied to the operations that would be moved from part 135 to part 121 by this proposal. Therefore, no changes are proposed to this requirement.

The FAA invites specific comments on the potential impact of these proposals on operations in Alaska.

Proving tests. Section 121.163 provides proving test requirements for Part 121. Section 135.145 requires 25 hours of proving tests for certificate holders that operate turbojet airplanes or airplanes for which two pilots are required by this chapter for operations under VFR if that airplane or an airplane of the same make and similar design has not been previously proved in any operations under part 135. Like § 135.145, § 121.163 requires proving tests for materially altered airplanes. However, in contrast, under § 121.163, proving tests apply to each airplane to be operated under part 121; it also describes three types of proving tests. Under § 121.163 and § 135.145, additional proving tests are required after the aircraft type certification tests. In other words, the initial operator of a type of airplane must conduct at least 100 hours of proving tests acceptable to the FAA, which can be reduced in appropriate circumstances. Moreover, for each kind of operation (e.g., domestic, flag, supplemental) that an operator conducts, 50 hours of proving tests are required, which are also reducible in appropriate circumstances.

For existing airplanes, in each case the FAA would assess whether to reduce proving test hours required by § 121.163(b) for the target operators that would be subject to § 121.163 if this proposal is adopted. Factors that might be considered in any request for reduction in proving test hours include the operator's experience and performance in part 135 operations.

VI.B.5. Subpart I—Airplane Performance Operating Limitations

Subpart I contains airplane performance operating limitations that apply to all part 121 certificate holders; however, not every section in subpart I applies to every certificate holder. For example, §§ 121.175 through 121.187 apply to reciprocating engine-powered transport category airplanes, and §§ 121.189 through 121.197 apply to turbine-powered-engine transport category airplanes (with an exception for certain reciprocating-powered airplanes that have been converted to turbo-propeller-powered). Sections 121.199 through 121.205 apply to nontransport category airplanes.

Sections 135.361 through 135.395 are virtually identical to §§ 121.171 through 121.205; the main differences reflect the absence of a dispatch system in part 135 operations. Section 135.363 makes clear that the term "large nontransport category airplane" as used in the subpart means an airplane type certificated before July 1, 1942. This language does not appear in part 121 because it is understood from the context in part 121 that the term "nontransport category airplane" is referring to older airplanes that were type certificated before the transport category was established. This clarification was needed in part 135 because of the existence of commuter category airplanes, most of which fit the definition of "large" and are also "nontransport category" airplanes. Part 135 addresses performance operating limitations for commuter category airplanes in § 135.398 by referencing §§ 135.385 and 135.387, which parallel §§ 121.195 and 121.197. The FAA believes that airplanes type certificated in the commuter category (or its predecessors) that would be operated under part 121 under this proposal should be required to meet, and are capable of meeting, the same performance operating limitations that now apply only to airplanes type certificated in the transport category. Therefore, the FAA proposes to delete the term "transport category" throughout subpart I and to include language where appropriate to except airplanes type certificated before January 1, 1965, that were not certificated in the transport category. This proposal would have the effect of requiring airplanes type certificated in the commuter category or a commuter category predecessor to be operated under the performance operating limitations of §§ 121.175 through 121.197, as applicable.

VI.B.6. Subpart J—Special Airworthiness Requirements

Subpart J contains special airworthiness requirements that, as stated in the applicability section (§ 121.211), apply to all certificate holders. While this is semantically accurate, it is confusing because the airplane description in § 121.213 in fact describes pre-1942 nontransport category and pre-October 1946 transport category airplanes thereby limiting the applicability of §§ 121.215 through 121.283 to those airplanes. Sections 121.285 through 121.291 apply across-the-board to present part 121 operations.

To clarify the applicability of this subpart, the FAA proposes to expand § 121.211 to include the substance of § 121.213. As proposed, § 121.211 would break the special airworthiness requirements into three categories: (1) Those that apply to certain older type certificated airplanes (§§ 121.215 through 121.283); (2) those that apply to all airplanes operating under part 121 (§§ 121.285 through 121.291); and (3) those that would apply to airplanes presently operating under part 135 (proposed new § 121.293).

Cargo carried in the passenger compartment. Section 121.285 requires that cargo carried in passenger compartments must be stowed in a fully enclosed bin or carried aft of a bulkhead or divider and properly restrained. Section 135.87 allows operators to carry cargo in an approved cargo compartment instead of a fully enclosed bin and to carry restrained cargo anywhere in the passenger compartment if it is restrained by a net that meets the requirements of § 23.787(e). The FAA considers that it is not practical to require airplanes now operating safely under part 135 to install fully enclosed cargo bins or to be otherwise as limited as required by § 121.285. Therefore, FAA proposes to amend § 121.285 to add an exception for commuter category (and predecessor) airplanes that would have the effect of allowing cargo to be carried in the passenger compartment as it is today.

Landing gear aural warning device. Section 121.289 contains a requirement for a landing gear aural warning device for large airplanes. Thus, at present this section applies to any airplane with a maximum certificated takeoff weight of more than 12,500 pounds. Appendix A of part 135 requires a landing gear warning device for airplanes having retractable landing gear and wing flaps, but the device need not be aural. The FAA considers that the cost of replacing a warning light with a warning sound would be minimal. Therefore, this section would apply to any airplane that presently operates under part 135 and that would be required by this proposal to operate under part 121. To allow adequate time for airplanes without aural warning devices to be retrofitted, the FAA proposes a compliance date of 2 years after the publication date of the final rule.

Emergency evacuation and ditching demonstrations. Section 121.291 contains requirements for conducting demonstrations of airplane evacuation and ditching procedures. The FAA requires these demonstrations upon introduction of a new type and model of airplane into passenger-carrying operations. For airplanes with a seating capacity of more than 44 passengers, an actual evacuation demonstration must show that the full capacity of the airplane and the crewmembers can be evacuated within 90 seconds. Also, for airplanes with more than 44 passenger seats a partial demonstration is required, as specified in § 121.291(c). Demonstrations are not required for airplanes with fewer than 44 passenger seats.

Under § 121.291(d) any certificate holder operating or proposing to operate one or more landplanes of any size in extended overwater operations must conduct a simulated ditching in accordance with Appendix D to part 121. The purpose of the ditching demonstration is to show that the certificate holder's training and procedures for a new type and model of airplane are satisfactory. The simulated ditching does not specifically require the use of flight attendants; the FAA proposes to apply this rule to any affected commuter operator who conducts extended overwater operations, whether or not flight attendants are used in the operation.

The FAA intends to apply this provision to the affected commuter operators only when a new type and model of airplane is introduced after the effective date of the final rule. If a certificate holder has been using an airplane in scheduled passenger-carrying operations before the effective date of the final rule and the FAA has not found any serious deficiencies with its ditching procedures during the past 5 years during either normal or National Aviation Safety Inspection Program (NASIP) inspections that have not been satisfactorily corrected, the FAA may make a determination that the operator's crewmember emergency training and ditching procedures are adequate.

The FAA proposes to amend § 121.291 to clarify that the partial demonstration and emergency evacuation procedures apply only to airplanes with more than 44 passenger seats.

New special airworthiness requirements (retrofit) and requirements applicable to future manufactured airplanes. In general, airplanes currently flown under part 121 must be transport category airplanes; that is, type certificated under part 25 or one of its predecessors (see § 121.157). The only exceptions are several models of airplanes that were type certificated before the transport category was established. For these earlier airplanes, part 121 contains special requirements established to ensure that transport category standards would be met to the maximum extent feasible. By requiring that airplanes previously operated under part 135 meet most part 121

requirements, the FAA would ensure that these airplanes type certificated in the commuter category or its predecessors, for the most part, meet part 121 safety standards. However, because these airplanes were not type certificated in the transport category, the FAA has reviewed part 25 to determine whether any additional requirements should be added to part 121 either as a retrofit requirement or a requirement that applies only to airplanes manufactured after some future date. There are two such requirements and each is discussed separately in this section of the preamble.

Ditching emergency exits. Section 25.807(e) contains requirements for ditching emergency exits in transport category airplanes. Regardless of whether or not the airplane is certificated for ditching, it must have exits that are usable while the airplane is afloat, in case ditching occurs during an overwater climb-out or approach. The ditching exits for transport category airplanes with 10 or more passenger seats must meet at least the dimensions of a Type III passenger emergency exit (20 inches wide by 36 inches high).

Part 23, as recently amended by Amendment 23–46 (59 FR 25772; May 17, 1994), now contains requirements for ditching exits; however, all of the normal or commuter category airplanes currently in service were type certificated before that amendment became effective. The FAA proposes to amend part 121 (proposed new § 121.293(a)) to require ditching exits for nontransport category airplanes type certificated after December 31, 1964. Unlike those required for transport category airplanes, the ditching exits would only have to be as large as those currently required by § 23.807(b) (19 inch by 26 inch ellipses). Compliance would be required 2 years after the publication date of the final rule. This proposed requirement would not entail adding new exits. The overwing exits of most airplanes type certificated under part 23 would probably qualify as ditching exits. Part 25 airplanes intended for non-part 121 transportation sometimes comply by providing a sheet metal dam that can be installed in the passenger entry doorway. If it is necessary to consider a floor-level exit as a ditching exit in a nontransport category airplane, a similar sheet metal dam could be provided. Therefore, the FAA believes that the cost of this proposal is minimal.

Takeoff warning system. Section 25.703 requires an aural warning to the flightcrew at the beginning of the takeoff roll when the wing flaps, leading edge devices, wing spoilers, speed brakes, and longitudinal trim devices are not in a position that would allow a safe takeoff. Part 23 does not require a takeoff warning system; in addition, part 23 airplanes typically do not have multiple types of devices. Accidents have occurred on transport category airplanes when the flightcrews initiated takeoffs when the airplanes were not in the proper configurations for takeoff. While the FAA is not aware of any incidents or accidents involving airplanes used by affected commuters, the FAA believes the cost of this modification on future manufactured airplanes is moderate. The FAA proposes that airplanes manufactured after a date 4 years after the publication date of the final rule would be required to have a takeoff warning system as required by § 25.703 except that a warning would not be required for any device if it is demonstrated that takeoff with that device in the most adverse position would not create a hazardous condition (see proposed § 121.293(b)).

VI.B.7. Subpart K—Instrument and Equipment Requirements

Instrument and equipment requirements are contained in part 121, subpart K and part 135 subpart C. The requirements are in addition to the airplane and equipment requirements of part 91. The discussion below emphasizes all new or revised equipment requirements except for major equipment such as flight data recorders and airborne weather radar, which are previously discussed in the "Major Issues" section of this notice.

The proposal would require commuter operators to comply with part 121 airplane and equipment requirements except in areas that will be specifically discussed.

Sections 121.303, 121.305, and 121.307 require certain airplane instruments and equipment. Most of the airplanes used by affected commuters already have these instruments and equipment as required under part 135 (§§ 135.143 and 135.149). Some of the part 121 equipment is required under part 135 only for IFR or for VFR over-the-top and VFR night operations. Under this proposal this equipment would be required for all operations.

Lavatory fire protection. Section 121.308 currently requires lavatory smoke detection systems, or equivalent, and automatically discharging fire extinguishers in lavatory receptacles for towels, paper, or waste for passenger-carrying transport category airplanes. Although mitigated somewhat by the typically shorter flight stage lengths, a passenger's temptation to smoke illicitly in a lavatory (when there is one), exists in nontransport category airplanes used in air carrier service as well as in transport category airplanes. This is particularly true today, since smoking has been banned on most domestic airline flights. Furthermore, the consequences of illicit smoking could be equally catastrophic regardless of how the airplane was type certificated. Therefore, the FAA proposes to apply the requirements of § 121.308 to airplanes formerly operated under part 135 that are equipped with lavatories. Section 121.308 would be amended to delete the references to transport category. The FAA proposes that the required equipment be installed within 2 years after the publication date of the final rule.

Emergency equipment. Section 121.309(b) requires that each item of emergency and flotation equipment must be inspected regularly in accordance with inspection periods established in the operations specifications to ensure its condition for continued serviceability and immediate readiness to perform its intended emergency purposes. Section 135.177(b) contains a similar requirement for part 135 operators of airplanes with more than 19 seats. The FAA proposes requiring affected commuter operations, including those with airplanes of 10 to 19 seats, to comply with the existing part 121 requirement. Other provisions in this proposal would require additional emergency equipment to be installed by the new part 121 operators. This requirement would mandate only that the equipment be inspected in accordance with the established periods.

Hand-held fire extinguishers. Sections 121.309(c) and 135.155 contain the requirements for hand-held fire extinguishers aboard airplanes. The requirements are basically the same, except that part 121 requires that at least two of the required hand fire extinguishers must contain Halon, or equivalent. Part 135 does not require any Halon fire extinguishers. Part 121 requires a hand-held fire extinguisher to be conveniently located for use in each galley located in a compartment other than a passenger, cargo, or crew compartment. Part 121 also requires that at least one hand fire extinguisher be conveniently located and easily accessible for use in the galley when the galley is in a passenger compartment. The FAA proposes that the affected commuters comply with the part 121 requirements for fire extinguishers. The FAA proposes to amend § 121.309(c)(7) to require that at least one of the fire extinguishers in the passenger compartment must be a Halon fire

extinguisher or equivalent. The FAA has in prior rulemakings addressed the need to allow Halon equivalents because the availability of Halon may be limited in the future (see, for example, 56 FR 15452, April 16, 1991).

First aid kits and medical kits. Section 121.309(d) requires that both approved first aid kits and approved emergency medical kits be carried on board passenger-carrying airplanes. The medical kits are intended to be used only by medically qualified persons, such as doctors, who may be on board the airplane. Section 135.177(a)(1) requires first aid kits to be carried on board airplanes with more than 19 passengers.

The FAA believes that, regardless of the size of the airplane, flight attendant requirement, or other factors, inflight emergencies could occur and a first aid kit may be needed. In the absence of a flight attendant, a flight crewmember or a passenger could use the first aid kit. Therefore the FAA proposes that first aid kits be required for all airplanes with more than 9 passenger seats operating under part 121.

The medical kit contains medical supplies such as certain drugs, syringes, and needles. Although medical kits may be used only by medically qualified personnel, flight attendants are required to be familiar with the medical kit and its contents. Since a flight attendant can monitor the security and use of the medical kit, medical kits should be required only on airplanes that are required to have a flight attendant. Additionally, if the FAA were to require a medical kit on 10–19 seat airplanes, that would mean that a pilot could be required to leave the flight deck to administer the use of the kit. Moreover, security and location of the kit pose additional problems for requiring a medical kit on an airplane where there is no flight attendant. Therefore, the FAA proposes to amend § 121.309(d) to require medical kits only for airplanes that are required to have a flight attendant. However, following review of the comments received, if the FAA decides to require a medical kit onboard 10–19 seat airplanes, the final rule will specifically require the medical kit for such airplanes.

Affected commuters should be aware of a recent rule requiring disposable latex gloves for both first aid kits and medical kits. The changes to part 121 in that rulemaking would apply also to commuters affected by this NPRM. (See 59 FR 52640; October 18, 1994, and 59 FR 62276; December 2, 1994.)

Crash ax. Section 121.309(e) requires that each airplane be equipped with a crash ax, while § 135.177 requires a crash ax only for airplanes with a passenger seating configuration of more than 19 passengers. Crash axes are intended to be used by crewmembers to escape from the flight deck in the event of an accident. In airplanes that do not have a separate flight deck and lockable door, crash axes normally would not be needed by the flight crewmembers to escape from the flight deck. The FAA therefore proposes in § 121.309 to retain the present requirement for crash axes only in airplanes that have a separate flight deck and lockable door.

Emergency evacuation lighting and marking requirements. Section 121.310(c), by referencing § 25.812(e), requires emergency evacuation lighting for passengers when all sources of illumination more than 4 feet above the cabin aisle are totally obscured. This requirement, which was adopted to enable passengers to find the emergency exits when the cabin is filled with dense smoke, applies to all transport category airplanes regardless of how many passenger seats they have. There is no corresponding requirement in part 23 or in part 135 for airplanes having a passenger-seating configuration of less than 20 seats. The FAA believes that applying this requirement to propeller-driven airplanes with 10 to 19 passenger seats is consistent with the present requirements for transport category turbojet-powered airplanes with similar seating capacities because the need to ensure conspicuous lighting of the exit is the same for nontransport category airplanes as for transport category.

Section 121.310(d) for emergency light operation requires that each light required by paragraphs (c) and (h) must be operable manually and must operate automatically from the independent lighting system. These requirements would apply to affected commuters. In § 121.310(d)(2)(i) each light must be operable manually both from the flightcrew station and from a point in the passenger compartment that is readily accessible to a normal flight attendant seat. Under the proposed rule this requirement would be modified for affected commuter operations that would not be required to have a flight attendant.

Section 121.310(e) requires that an exit operating handle may not be used if its brightness decreases below a specified level. Section 135.178(e) contains an identical requirement for airplanes having a passenger seating configuration of more than 19 seats. Under this proposal the requirement would also apply to airplanes with a passenger configuration of 10–19 seats. Compliance with this requirement can be demonstrated by assuring that the exit operating handle is well illuminated by the emergency lighting system or by using a self-illumination system.

Section 121.310(f) contains standards for access to various exit types that, by virtue of § 121.157, presently apply only to transport category airplanes. Section 135.178(f) is identical for airplanes having a passenger configuration of more than 19 seats. The FAA considers that because of the sizes and configurations (that is, 10 to 19 passenger-seat configurations) of the airplanes and because of the type certification requirements of part 23 applicable to these exits, it is not necessary to apply these requirements to the nontransport category airplanes operating under part 135 that would be affected by this rulemaking. Therefore, the FAA proposes to amend § 121.310(f) to exclude commuter category (or predecessor) airplanes.

Section 121.310(g) (and its parallel requirement in § 135.178(g) for more than 19 passenger seat airplanes) require emergency exits to be marked on the outside by a 2-inch band contrasting in color with the surrounding fuselage. This requirement was adopted to enable ground rescue personnel to locate the exits more rapidly in an emergency condition. Most airplanes with a passenger-seating configuration of less than 20 seats operating under part 135 already meet this requirement and, for those that do not, compliance would merely require painting the bands around each exit. By proposing to require compliance with this requirement, the FAA would standardize the presentation of exit markings for the benefit of ground rescue personnel at minimum cost. Compliance would be required within 1 year after the publication date of a final rule.

Section 121.310(h) requires airplanes for which the application for type certification was made before May 1, 1972, to meet the exterior emergency lighting standards of § 25.812, in effect on April 30, 1972, or any later standards in effect if the application for type certification was made later. The lighting is provided for two purposes. One is to preclude passengers from hesitating as they leave the airplane because they cannot see what they a stepping into. The other is to preclu injuries when the airplane has come rest on uneven, rocky, or wood terrain. The need for such lighting is n related in any way to the size of the airplane. The FAA proposes to requ non-transport category airplanes type certificated after December 31, 1964 (i.e., part 23 normal and utility category)

to comply with § 25.812 in effect April 30, 1972, within 2 years after the publication date of a final rule.

The FAA proposes that airplanes with a passenger seating configuration of less than 20 seats previously operated under part 135 be required to comply with the above described emergency lighting systems (that is, emergency exit signs, interior lighting, exit handles, and exterior lighting) and, except for the marking requirement discussed above, proposes a compliance date 2 years after the publication date of a final rule. Because of the potentially high cost of this proposed retrofit requirement, the FAA invites comments on the feasibility of meeting these part 121 emergency lighting requirements and of alternative means of achieving an acceptable level of safety

Seatbacks. Section 121.311 prohibits a certificate holder from taking off or landing unless passenger seats are in the upright position. Section 135.117 requires only that passengers be briefed that seats should be in the upright position. The FAA proposes that affected commuters be required to comply with § 121.311.

Seat belt and shoulder harnesses on the flight deck. Section 121.311(f) requires a combined seat belt and shoulder harness, with a single-point release that meets the requirements of § 25.785. Part 135 does not contain a requirement for a single-point release system although the FAA believes that virtually all commuter category airplanes being manufactured today have such a system. To ensure that this is the case for newly manufactured airplanes the FAA proposes to require that airplanes manufactured after 1 year after publication of final rule meet the requirements of § 121.311(f).

Interior materials and passenger seat cushion flammability. Section 25.853(b) was amended in 1984 to require seat cushions to meet greatly enhanced flammability standards. At the same time, §§ 121.312(b) and 135.169(a) (but not for commuter category airplanes) were amended to require airplanes already in service to meet the improved seat cushion flammability standards after November 1987. In the 7 years that have passed since that date, the improved cushions are credited with saving a number of passengers' lives.

The seat cushion flammability standards apply to all transport category airplanes regardless of the passenger capacity. In the case of an inflight cabin fire the probability that a fire would occur in a commuter or normal category airplanes is exactly the same as in a transport airplane. Once a fire occurs, occupants are presented with exactly the same hazards as in a transport category. The need for seat cushions meeting the same flammability standards, therefore, is exactly the same. Fires are generally caused by fuel tanks being ruptured during a crash. The improved seat cushion standards provide considerable additional protection in a postcrash fire; they also provide considerable protection for airplanes of all passenger capacities from inflight fires. Tests have shown that cushions meeting these standards are much less likely to ignite and sustain a flame than those that do not meet the standards. Preventing a fire from occurring is the best possible form of fire protection. If a fire does occur, compliance with the improved seat cushion flammability standards slows the spread of the fire through the cabin and provides more time to bring it under control. Therefore, the FAA proposes to require nontransport category airplanes type certificated after December 31, 1964, to comply with the same seat cushion flammability standards that apply to other airplanes operated under part 121. Compliance would be required by a date 2 years after the publication date of the final rule or on the first replacement of the cushions, whichever occurs first. The proposed rule would allow for granting deviations for up to 2 additional years when justified by unique integral-seat cushion configurations.

In addition to the flammability standards that already existed in part 25, that part was amended in 1986 to require large surface-area components (e.g., sidewalls, bulkheads, ceilings, etc.) to pass tests using the Ohio State University (OSU) radiant rate of heat release test apparatus. The OSU test requirements for large surface-area materials were not made applicable to airplanes with a seating capacity of 19 or less seats. For those airplanes, the flammability standards that previously existed in part 25 were considered adequate and appropriate. The costs of retrofitting existing airplanes now would not be commensurate with the minimal increase in safety that would result. However, the FAA finds that it is reasonable to propose that nontransport category airplanes newly manufactured after 4 years after the publication date of the final rule comply with § 121.312(a) by meeting the same large-surface area component flammability requirements currently required for transport category airplanes.

Cockpit and door keys. Section 121.313 requires that there be a lockable door between the cockpit and the cabin and that there be a key for each cockpit door that is readily available to each crewmember. Currently, part 135 does not address this issue. The FAA proposes that the affected commuters be required to comply with the part 121 rule if there is a door with a lock or a door that can be retrofitted with a lock. (Curtains or accordion doors are not considered lockable doors.) If a lockable door already exists or can be retrofitted, the certificate holder would be required to provide a cockpit key that is readily available to each crewmember. The language of § 121.313(f) would be changed to exclude airplanes that do not have cockpit doors.

Cargo and baggage compartments. Part 25 (as referenced in § 121.314) contains requirements for cargo or baggage compartment liners, smoke detection, and fire extinguishment for various classes of compartments. The compartment classification system, also duplicated in § 121.221 (which as previously discussed applies only to certain airplanes type certificated before November 1, 1946), is based on the compartment's accessibility for fire detection and extinguishment. Part 25 was amended in 1989 to require the liners of Class C and D compartments to meet more stringent flammability standards. Section 121.314 was also adopted at that time to require the improved liners in existing transport category airplanes on a retroactive basis.

Part 23 contains no classification system or requirements for compartment fire protection; however, a proposed rule to add comparable requirements was issued on July 22, 1994, (59 FR 37620). While the cost of providing liners, smoke detection, and fire extinguishers in the cargo or baggage compartments of existing part 23 airplanes would be prohibitive, the FAA believes that it would be appropriate to require liners, smoke detection, and fire extinguishment for remote cargo or baggage compartments in newly manufactured part 23 airplanes. Therefore, the FAA proposes to require this modification for commuter category (or its predecessor) airplanes manufactured 4 years or more after the publication date of the final rule.

There is no service history of specific problems from the absence of this equipment. Because of the potential high cost of compliance, the FAA specifically requests comments describing how this safety objective can be achieved, including alternatives such as requiring only liners and smoke detection. The FAA needs to obtain specific and detailed information concerning cost and other problems associated with this proposal in order to make an informed decision at the final rule stage of this rulemaking.

Fuel tank access covers. As a result of the 1985 Manchester British Air Tours accident (in which a piece of metal from the aircraft engine punctured the fuel tank access panel and created a fire), § 25.963(e) was amended in 1989 to require that all covers located in an area where a strike by foreign objects is likely must have as much resistance to fire or debris penetration as the surrounding structure. Concurrent with this amendment, § 121.316 was amended to require airplanes already in service to comply with § 25.963(e) on a retrofit basis. These requirements pertain to all transport category, turbine powered airplanes. Due to their smaller size and turbo-propeller configuration, part 23 nontransport airplanes generally do not present the same hazard. Fuel tanks of current designs are located in the wings well aft of the strike zone of any engine debris. Also, these part 23 airplanes are likely to have access covers that provide no less resistance to fire or debris penetration than the surrounding wing structure. The FAA considers that it would be a waste of resources to require a demonstration of compliance. Therefore, the FAA does not propose to require part 23 nontransport airplanes to comply with §§ 25.963(e) and 121.316. Since § 121.316 applies only to "turbine-powered transport category" airplanes, no rule change is needed. The FAA points out that transport category airplanes previously operated under part 135 would have to comply with § 121.316.

Oxygen requirements. Sections 121.327 through 121.335 cover supplemental oxygen requirements and oxygen equipment requirements. The requirements are similar to the oxygen requirements in § 135.157 except that for certain airplanes, part 121 requires less oxygen. Each affected commuter who would have to comply with part 121 oxygen requirements as a result of this rulemaking should readily be able to operate its airplanes in accordance with the oxygen requirements specified in part 121.

Portable oxygen for flight attendants. Section 121.333(d) requires that each flight attendant shall, during flights above 25,000 feet, carry portable oxygen equipment with at least a 15-minute supply of oxygen, unless there are enough portable oxygen units with masks or spare outlets and masks are distributed through the cabin to ensure immediate availability of oxygen to each flight attendant, regardless of his or her location at the time of cabin depressurization. Part 135 does not have a similar requirement for portable oxygen for flight attendants. The FAA proposes that affected commuters who use flight attendants in their operations and that operate above 25,000 feet be required to comply with the part 121 requirement.

Protective breathing equipment (PBE). Section 121.337 contains requirements for equipping the flight deck and passenger compartments of transport category airplanes with PBE. Part 135 does not currently require any type of PBE.

There are two kinds of PBE with two sets of approval criteria. PBE may be portable or built into the airplane (fixed or sedentary). A PBE unit consists of an oxygen supply and facial protection, such as a full face mask, smoke hood, or face mask and goggles. A fixed or portable PBE is installed in the airplane for use by flight crewmembers while they are at their stations. Portable PBE that meets applicable criteria and is approved may be used on the flight deck and/or throughout the airplane.

Section 121.337(b)(8) requires PBE, either fixed or portable, to be conveniently located on the flight deck and easily accessible for immediate use by each flight crewmember. In addition, § 121.337(b)(9) requires that for combatting fires a portable PBE must be located on or close to the flight deck with easy access by each flight crewmember for fighting fires. A portable PBE in the passenger compartment must be located within 3 feet of each hand fire extinguisher. Both of these requirements provide that the Administrator may authorize another location if special circumstances exist that make compliance impractical and the proposed deviation would provide an equivalent level of safety.

The proposed rule would require affected commuters to comply with the PBE requirements of § 121.337. To be in compliance, an airplane with a passenger-seating configuration of 10 to 19 seats would have to have at least three PBE: one PBE, fixed or portable, for each flight crewmember at their station, and an additional portable PBE on the flight deck for use in fighting fires. An airplane with a passenger-seating configuration of 20 to 30 seats would have to have at least four PBE: One PBE, fixed or portable, for each flight crewmember at their station; an additional portable PBE on the flight deck for fighting fires; and a portable PBE in the passenger compartment located within 3 feet of the required hand fire extinguisher.

The applicability of the current rule would be revised to include other than transport category airplanes. Section 121.337(b)(9)(iv) would also be revised to except airplanes having a passenger-seating configuration of fewer than 20 seats and a payload capacity of 7,500 pounds or less from the requirement to have a PBE in the passenger compartment. The exception is needed because these airplanes are not required to have a flight attendant; the portable PBE on the flight deck would be used by a flight crewmember for fighting a fire.

There are major safety benefits to requiring PBE. PBE prevents injury or death of crewmembers from smoke or harmful gasses and enables them to continue flying the airplane and assisting passengers. PBE decreases the likelihood of death or injury to passengers because crewmembers will not be incapacitated by smoke or harmful gasses and thus are able to continue to perform their duties. Finally, PBE allows crewmembers to fight fires without succumbing to smoke inhalation, thereby decreasing the risk of passenger injury and death. The FAA proposes to apply the PBE requirement to affected commuters because fires occur at least as frequently in airplanes used by affected commuters as they do in the larger airplanes currently operated under part 121. Fires can have worse effects in smaller airplanes because there is less room to move passengers away from the source of the fire. Also, since there is less cabin volume, the smoke may become worse more quickly.

The FAA proposes to require compliance with § 121.337 by a date 2 years after the publication date of the final rule.

Additional life rafts for extended overwater operations. Sections 121.339 and 135.167 require that airplanes engaged in extended overwater operations provide enough life rafts of a rated capacity and buoyancy to accommodate the occupants of the airplane. In addition, § 121.339 requires excess rafts so that all occupants of the airplane can be accommodated in the event of the loss of one raft of the largest rated capacity.

A life raft, which is approximately the size of a suitcase before it is inflated, is an important piece of survival equipment in an emergency ditching. Rafts facilitate rescue efforts by keeping passengers together and helping to prevent hypothermia. The FAA believes that the affected commuters that engage in extended overwater operations should be required to meet the part 121 requirements. As with current part 121 certificate holders, affected commuters can apply for waivers, and the FAA can decide, on a case-by-case basis, if a waiver is appropriate. These waivers are issued pursuant to § 121.339(a) which

permits the Administrator to allow deviation from the requirement to carry certain equipment for extended overwater operations. Since there are few extended overwater operations conducted by commuters, the FAA does not expect this proposed requirement to have a significant impact.

Flotation devices. Unless an airplane is equipped with life preservers, flotation cushions are required in § 121.340 for each passenger whenever an airplane is used in any overwater operation. In parts 121 and 135, life preservers are required only for extended overwater operations, (§§ 121.339 and 135.167). Therefore, airplanes used in extended overwater operations would already be equipped with life preservers, so they would not need to have flotation cushions. Section 121.340 has been applied so that virtually every airplane is equipped with either flotation cushions or life preservers, because it is practically impossible to operate any place without flying over a body of water of sufficient depth to require some sort of flotation means.

The advantage of requiring flotation means is that if an airplane crashes in the water, occupants would be provided some protection. Many of the most active airports have runways with takeoff or landing approaches over water. While ditchings (anticipated water landings) in the high seas are relatively rare events, crashes in the water at the end of runways are less rare and can result in drownings.

Therefore, the FAA proposes that airplanes equipped with 10 or more seats operating in scheduled passenger operations and not already equipped with life preservers be equipped with flotation cushions. To allow any replacement of seat cushions to be coordinated with the seat cushion flammability requirements of § 121.312(c), the FAA proposes a compliance date of 2 years after the publication date of the final rule.

Pitot heat indication system. Section 25.1326 requires a pitot heat indication system to indicate to the flightcrew when a pitot heating system is not operating. Part 23 currently requires pitot heat systems for airplanes approved for IFR flight or flight in icing conditions, but doesn't address the requirement for a pitot heat indication system. This new requirement applies to new type certification and will not affect existing in-service commuter airplanes or future production of currently approved commuter airplanes. Section 121.342 currently requires a pitot heat indication system on all airplanes that have a pitot heating system installed.

In recommendation A–92–86, the National Transportation Safety Board (NTSB) recommended that small airplanes certificated to operate in icing conditions and at altitudes of 18,000 feet mean sea level and above should be modified to provide a pitot heat operating light similar to the light required by § 25.1326. As recommended by the NTSB, part 23 is currently being amended to require such indication for commuter category airplanes (Notice 94–21, 59 FR 37620, July 22, 1994).

The FAA proposes to amend § 121.342 to require nontransport category airplanes type certificated after December 31, 1964, to incorporate pitot heat indication systems. Affected commuters would have to comply within 4 years after the publication date of this rulemaking.

Flight data recorders. Section 121.343 requires operators to equip certain airplanes with flight data recorders (FDR) that have certain data parameters. Section 135.152(a) requires FDR in multiengine turbine-powered airplanes with a passenger configuration of 10 to 19 seats that were brought onto the U.S. register after October 11, 1991. Section 135.152(b) requires FDR on multiengine, turbine-powered airplanes having a passenger seating configuration of 20 to 30 seats.

As discussed in the "Major Issues" section of this notice, the FDR requirements would continue unchanged under the proposal. Therefore, the current applicable requirements in part 135 would be moved into part 121 by reference in proposed § 121.344.

Radio equipment. Sections 121.345 through 121.351 cover radio equipment requirements. Part 121 specifies radio equipment requirements for operations under VFR over routes navigated by pilotage, for operations under VFR over routes not navigated by pilotage or for operations under IFR or over-the-top, and for extended overwater operations. The requirements are more specific and restrictive than those in § 135.161. The radio equipment requirements in part 121 are cumulative; that is, the regulations prescribe basic radio equipment requirements for VFR over routes navigated by pilotage and additional equipment for VFR over-the-top or IFR. Most part 121 operations are conducted under IFR. The proposed rule would require affected commuters to comply with part 121 radio equipment requirements. Because additional equipment would be required for VFR conditions in operations under part 121, the FAA requests comments on the appropriateness of the part 121 requirements for operations presently conducted under part 135 and, if inappropriate, commenter recommendations for alternate requirements.

Emergency equipment for operations over uninhabited terrain. Section 121.353 prescribes the emergency equipment needed for operations over uninhabited terrain areas for flag and supplemental air carriers and commercial operators. The requirements include pyrotechnic signaling devices, emergency locator transmitters (ELT's), and survival kits equipped for the route to be flown. Similar requirements exist in part 135 for airplanes having a passenger-seating configuration of more than 19 passengers. (§§ 135.177 and 135.178). The proposed rule would require compliance with § 121.353. Survival kits would be a new requirement for affected commuter operators of airplanes with 10 to 19 seats.

Airborne weather radar. Section 121.357 requires airborne weather radar equipment for transport category airplanes (except for C–46 airplanes). Similar requirements exist in § 135.175, which applies to large transport category airplanes. Section 135.173 allows for the use of either airborne weather radar equipment or approved thunderstorm detection equipment. As discussed in the "Major Issues" section of this notice, affected commuters would be required to have approved airborne weather radar equipment. The applicability language of part 121 would be revised accordingly.

Low-altitude windshear systems. Section 121.358 requires either low-altitude windshear warning and guidance systems or predicting systems on turbine-powered airplanes. The definition for turbine-powered airplanes in § 121.358(d) specifically excludes turbo-propeller-powered airplanes. As discussed in the "Major Issues" section of this notice, this requirement would not apply to affected commuter operators using turbo-propeller-powered or piston-powered airplanes.

Cockpit voice recorders. Section 121.359 requires cockpit voice recorders (CVR) on all large turbine-powered-engine airplanes and on large pressurized airplanes with four reciprocating engines. Section 135.151(a) requires one standard of CVR on all multiengine turbine-powered airplanes or rotorcraft having a passenger seating configuration of six or more and for which two pilots are required by type certification, and another standard for all multiengine turbine-powered airplanes or rotorcraft

having a seating configuration of 20 or more seats. As discussed in the "Major Issues" section of this notice, the proposal would not change current CVR requirements; and CVR language from part 135 would be incorporated to maintain existing part 135 requirements.

Ground proximity warning system (GPWS). GPWS provides a warning to the flightcrew when an airplane is dangerously close to the ground, allowing time for the flightcrew to take corrective action and avoid collision with the ground. These types of accidents are called controlled flight into terrain (CFIT) because they occur when the flightcrew is not aware that the airplane is dangerously close to terrain.

Section 121.360 requires GPWS on turbine-powered airplanes. Section 121.360(f) also requires a ground proximity warning-glide slope deviation alerting system that meets certain standards. Section 135.153 requires a ground proximity warning system for any turbine-powered airplane having a passenger-seating configuration of 10 or more seats. There is also a provision in § 135.153(b) that allows an airplane to be operated until April 20, 1996, without a GPWS if the airplane is equipped with an alternative system that conveys warnings of excessive closure rates with the terrain and if certain other requirements are met. Part 135 does not specifically require a glide slope deviation alerting system nor does it provide specific TSO standards as part 121 does.

Although the GPWS requirements in parts 121 and 135 appear to be different, any approved GPWS under part 135 would be capable of complying with part 121 standards. By April 20, 1996, which will precede the compliance date of this proposed rule, all affected commuter airplanes must have approved GPWS. Therefore, there will be no difference in the requirements as of the effective date of this proposed rulemaking.

VI.B.8. Subpart L—Maintenance, Preventive Maintenance, and Alterations

Applicability. Part 121 operators are required to adopt a continuous airworthiness maintenance program (CAMP), which has a proven track record for large transport category airplane. Under § 135.411(a)(2), airplanes that are type certificated for a passenger-seating configuration of 10 seats or more are already required to comply with a CAMP similar to part 121 requirements. The proposed rule would require all airplanes type certificated for 10 or more passengers to comply with part 121 CAMP requirements. These requirements are consistent with present-day maintenance standards and techniques to manage airplane airworthiness. The proposal to include affected commuters under part 121 maintenance requirements would not necessitate a revision to § 121.361.

Section 121.361(b) contains a deviation provision allowing certain noncertificated persons to perform maintenance. Affected commuters would now have this option available. Since many of the airplanes that are the subject of this rulemaking are manufactured outside the United States, this deviation provision would allow operators to have the original equipment manufacturers perform some overhauls and repairs.

Responsibility for airworthiness. Section 121.363 places the responsibility for the airworthiness of an airplane on the certificate holder. Under the proposal affected commuters would have to comply with § 121.363. A similar requirement appears in § 135.413. Section 135.413(a) requires a part 135 operator to have defects repaired between required maintenance under part 43. This provision does not appear in part 121. Part 121 operators are required to have defects repaired in accordance with their maintenance manual. As an FAA-approved maintenance manual requires no less than the part 43 requirements, affected commuters would experience no change in requirements.

Maintenance, preventive maintenance, and alteration organization. Section 121.365 requires the certificate holder to have an adequate maintenance organization for the accomplishment of maintenance, preventive maintenance, and alterations on its airplanes. The provision allows the certificate holder to arrange with another person to accomplish the work, provided that the certificate holder determines that the person has an organization adequate to perform the work. This provision requires separate inspection functions to ensure that those items directly affecting the safety of flight are verified to be correct by someone other than the person who performed the work. Since § 135.423 is essentially identical to § 121.365, there would be no change in requirements for affected operators. Affected operators would be required to comply with part 121.

The FAA recognizes that other provisions of this proposed rule, which would require affected operators to install new equipment and might lead to replacement of part 23 type certificated airplanes with part 25 type certificated airplanes, could necessitate that maintenance personnel (as required by this section and by §§ 121.367 and 121.371) have additional skills and training. The effect of these other provisions on maintenance costs is discussed in the regulatory evaluation summary in this notice.

Maintenance, Preventive Maintenance, and Alterations Programs. Section 121.367 establishes the requirement for a certificate holder to have an inspection program and a program covering other maintenance, preventive maintenance, and alterations. The rule provides for accomplishment of maintenance, preventive maintenance, and alterations in accordance with the certificate holder's manual regardless of whether the work is performed by the certificate holder or another person. The corresponding part 135 provision, § 135.425, is essentially identical. Affected operators would be required to comply with part 121.

Manual requirements. Section 121.369 requires the certificate holder to include in its manual a description of the organization required by § 121.365 and a list of persons with whom it has arranged for the performance of any required inspections, other maintenance, preventive maintenance, or alterations. The manual must contain the programs required by § 121.367, including the methods of performing required inspections, other maintenance, preventive maintenance, or alterations. This provision requires a certificate holder to provide a maintenance program in manual form to be used in its organization in the performance of maintenance, preventive maintenance, and alteration programs. This manual is necessary to ensure that the certificate holder has provided an adequate maintenance program for the airworthiness of its airplanes and to inform its personnel, or other persons who perform maintenance, of their responsibilities regarding the performance of maintenance on the airplane.

Section 135.427 is basically identical to § 121.369. Affected operators would be required to comply with part 121.

Required inspection personnel. Section 121.371 contains certain requirements for inspection personnel, including provisions for specific qualifications for and supervision of an inspection unit. Included is a requirement for listing persons who have been trained, qualified, and authorized to conduct required inspections. The persons must be identified by name, occupational title, and the inspections that they are

authorized to perform. This ensures that competent and properly trained inspection personnel are authorized to perform the required inspections. Section 135.429 has language that is similar to this section. Affected operators would be required to comply with part 121.

Continuing analysis and surveillance. Section 121.373 on continuing analysis and surveillance is in nearly all respects identical to the provisions of § 135.431. The FAA proposes that affected commuters would comply with § 121.373. Section 121.373 provides for the establishment by the certificate holder of a system to continually analyze the performance and effectiveness of the programs covering maintenance, preventive maintenance, and alterations. This section also provides for the correction of any deficiencies in those programs. Also included in this section is a provision whereby the Administrator may require the certificate holder to make changes in either or both of its programs described in paragraph (a) if those programs do not contain adequate procedures and standards to meet the requirements of this part. The requirement is necessary to provide feedback to the certificate holder on the certificate holder's programs covering maintenance, preventive maintenance, and alterations, so that deficiencies can be corrected. The requirement for a procedure providing for changes required by the Administrator is similar to procedures included in other parts of the Federal Aviation Regulations and ensures that deficient programs are corrected promptly. Since §§ 121.373 and 135.431 are basically identical, no new burdens would be imposed by the proposal to require affected operators to comply with § 121.373.

Maintenance and preventive maintenance training programs. Section 121.375 requires training programs that ensure that persons performing maintenance or preventive maintenance functions (including inspection personnel) are fully informed about procedures, techniques, and new equipment in use and that those personnel are competent to perform their required duties. This section is identical to § 135.433. Affected operators would be required to comply with part 121.

Maintenance and preventive maintenance personnel duty time limitations. Section 121.377 establishes the requirements for maintenance personnel to be relieved from duty for a period of at least 24 consecutive hours during any 7 consecutive days, or the equivalent thereof within any 1 calendar month. This requirement is for maintenance personnel within the United States. This provision would be a new requirement for affected commuters. The FAA believes that this provision to be a necessary safety precaution to ensure that maintenance personnel are provided adequate rest.

Certificate requirements. Section 121.378 requires that each person, other than a repair station certificated under the provisions of Subpart C of part 145, who is directly in charge of maintenance, preventive maintenance, or alterations, and each person performing required inspections, hold an appropriate airman certificate. The FAA determined when this provision was adopted for part 121 that it was necessary to ensure that the certificate holder uses maintenance personnel who have adequate knowledge of the regulations and hold an appropriate airman certificate. An identical requirement appears in § 135.435. The FAA proposes that affected operators would comply with part 121.

Authority to perform and approve maintenance, preventive maintenance, and alterations. Section 121.379 allows the certificate holder to have maintenance performed by other persons. The rule also permits a certificate holder to perform maintenance for other certificate holders. This provision allows the part 121 certificate holder some flexibility in scheduling and performing its maintenance by allowing the work to be performed by other persons when the certificate holder does not have the personnel or facilities available to perform certain maintenance. The rule requires that all major repairs and alterations must have been accomplished with data approved by the Administrator. Section 135.437 contains the same requirements. The FAA proposes that affected operators would comply with part 121.

Maintenance recording requirements. Section 121.380 provides for the preparation, maintenance, and retention of certain records using the system specified in the certificate holder's manual. The rule also specifies the length of time that the records must be retained and requires that the records be transferred with the airplane at the time it is sold. The requirements of §§ 135.439 and 121.380 are essentially identical so few new recordkeeping requirements would be imposed. A small change is necessary to § 121.380(a)(2) to accommodate propeller-driven airplanes used by some affected commuters. This proposed requirement is in § 135.439(a)(2)(i).

Section 121.380(a)(2)(v) would be amended to adopt the language found in § 135.439(a)(2)(v) to provide more complete records on airworthiness directive compliance. The current part 121 requirement does not specify maintaining in the records the times and dates for conducting recurring actions required by an airworthiness directive, although the FAA assumes that current part 121 certificate holders already do this. This is particularly important if ownership of an airplane is transferred.

Transfer of maintenance records. Section 121.380a requires the certificate holder to transfer certain maintenance records to the purchaser at time of the sale, in either plain language form or in coded form. The coded form must provide for the preservation and retrieval of information in a manner acceptable to the Administrator. The purchaser may permit the seller to keep physical custody of the records; however, custody by the seller does not relieve the purchaser of the responsibility under § 121.380(c) to make the records available for inspection by a representative of the Administrator or authorized representatives of the National Transportation Safety Board. The purpose of this section is to ensure that a new owner receives all the records that are to be maintained by an operator as required by § 121.380. This section is worded the same as § 135.441 except that the part 121 provision allows the purchaser to select the format of the transferred records.

The FAA notes that both § 121.380 and § 121.380a, and all other maintenance recordkeeping requirements, are being reviewed by an Aviation Rulemaking Advisory Committee (ARAC) that is studying ways to improve the recordkeeping requirements.

VI.B.9. Subpart M—Airman and Crewmember Requirements

Subpart M of part 121 and subparts E and F or part 135 contain airman and crewmember requirements. A discussion of the Age 60 Rule appears in the "Major Issues" section of this notice.

Flight attendant complement. The number of flight attendants required on airplanes varies depending on the seating capacity of the airplane. Section 121.391 requires one flight attendant for airplanes having a seating capacity of more than 9 but less than 51 passengers. Section 135.107 requires one flight attendant for airplanes having a passenger seating configuration, excluding any pilot seat, of more than 19 passengers.

Flight attendants are required on airplanes to perform essential routine and emergency safety duties. Routine duties include numerous items, such as passenger briefings and ensuring that carry-on baggage is correctly stowed. On larger airplanes flight attendants are needed in emergencies to operate emergency equipment and assist passengers in evacuating the airplane. Airplanes currently operated under part 121 are larger and heavier, the distance to the nearest emergency exit may be greater, and the emergency equipment is more complex to operate. Small airplanes are easier to evacuate than large airplanes and the close proximity of the flightcrew make handling inflight emergencies easier than on large airplanes. In addition, airplanes with passenger-seating capacities from 10 to 19 might have to install an additional seat for the flight attendant or dedicate a seat which could be revenue producing to provide a seat for a flight attendant. Not requiring flight attendants for commuter airplanes with a seating capacity of less than 20 passengers has not proven to be a safety hazard. Therefore, the FAA is retaining the requirement for a flight attendant for more than 9 passengers for current part 121 airplanes, but proposes to require a flight attendant for affected commuters only in airplanes with more than 19 passenger seats. This change would not have any effect on current part 121 certificate holders and would not impact the affected commuters since it is the current standard for part 135.

Flight attendants being seated during movement on the surface. Section 121.391(d) states that during movement on the surface, flight attendants must remain at their duty stations with safety belts and shoulder harnesses fastened except to perform duties related to the safety of the airplane and its occupants. Part 135 has a similar provision in § 135.128(a), except that it does not specify that flight attendants may be performing safety duties during movement on the surface. The FAA proposes that the affected commuters with flight attendants comply with the part 121 rules and that flight attendants be allowed to perform safety related duties, such as ensuring that passenger seat belts are fastened and conducting passenger briefings, during movement on the surface.

Flight attendants or other qualified personnel at the gate. Section 121.391(e) requires that a specified number of flight attendants be on board the airplane when it is parked at the gate and passengers are on board and that the number of flight attendants cannot be reduced unless certain conditions are met. It also allows the use of "substitutes" providing they are qualified. Part 135 does not have requirements on flight attendants at the gate, although commuter operators may have policies preventing unattended passengers when the airplane is parked at the gate. The FAA proposes that all airplanes being operated by affected commuters be required to comply with current § 121.391(e); that is, they must have a flight attendant or substitute (such as a flight crewmember) on board when the airplane is parked at the gate and passengers are on board. The substitutes must be given training in the emergency evacuation procedures for that airplane as required by § 121.417 and they must be identified to the passengers. If there is only one flight attendant or other qualified personnel on board the airplane, that person must be located in accordance with the certificate holder's FAA-approved operating procedures.

Since as a result of this proposed rule § 121.391(e) would apply in the future to operations that do not use flight attendants, the FAA proposes to move paragraph (e) to a new separate section, proposed § 121.393, to highlight the crewmember requirements that apply when an airplane is on the ground and will continue to another destination.

Aircraft dispatchers. Section 121.395 requires that each domestic and flag air carrier shall provide enough qualified aircraft dispatchers at each dispatch center to ensure proper operational control of each flight. This would be a new requirement for affected commuters. It is associated with compliance with the dispatch requirements of part 121, which is discussed in the "Major Issues" section of this preamble.

VI.B.10. Subparts N and O—Training Program and Crewmember Qualifications

There are no proposed revisions to these subparts in this notice except that § 121.435 would be removed. It is an obsolete requirement since helicopters are no longer operated under part 121. See discussion of a recent proposal to these subparts in the "Recent FAA Actions" section of this notice.

VI.B.11. Subpart P—Aircraft Dispatcher Qualifications and Duty Time Limitations: Domestic and Flag Air Carriers

The requirements in § 121.463 of subpart P would be revised to clarify where an observer is to sit if the airplane does not have a jump seat on the flight deck.

VI.B.12. Subpart Q—Flight Time Limitations and Rest Requirements: Domestic Air Carriers

A discussion of this subpart appears in the "Major Issues" section of this notice.

VI.B.13. Subpart R—Flight Time Limitations: Flag Air Carriers

A discussion of this subpart appears in the "Major Issues" section of this notice.

VI.B.14. Subpart S—Flight Time Limitations: Supplemental Air Carriers and Commercial Limitations

A discussion of this subpart appears in the "Major Issues" section of this notice.

VI.B.15. Subpart T—Flight Operations

This subpart prescribes requirements for flight operations applicable to all certificate holders except as otherwise specified. The requirements include responsibility for operational control, passenger briefings, use of oxygen, carry-on baggage, use of certificated airports, and other requirements.

Operational control. Sections 121.533 and 121.535 require each domestic and flag operation to be responsible for operational control and specifies the responsibilities for aircraft dispatchers and pilots for each flight release. These would be new requirements for affected commuters. Section 121.537 contains the requirements for operational control for supplemental operations. While the requirements for domestic and flag operations are based on a dispatch system, the requirements for supplemental operations are based on a flight following system. For all three types of operations the requirements in part 121 for operational control are more detailed and provide better guidance than those in part 135 (§§ 135.77 and 135.79). Part 121 assigns specific responsibilities to the pilot in command and the aircraft dispatcher, clearly stating these requirements and how operational control is to be implemented. In part 135, the certificate holder must list names and titles of those responsible for operational control, but there are no specific requirements. Operational control is critical to flight safety and the requirements in part 121 would provide a higher level of safety for affected commuters.

Admission to the flight deck. Section 121.547 specifies who may be admitted to the flight deck of a passenger-carrying airplane. The part 121 section is similar to but more detailed than § 135.75, which applies to the admission of FAA inspectors to the pilots' compartment,

except that § 121.547 provides for additional types of persons who may be admitted.

Emergency procedures. Parts 121 and 135 require that, when the certificate holder or PIC knows of conditions that are a hazard to safe operations, the operation must be restricted or suspended until the hazardous conditions are corrected. (See §§ 121.551, 121.553, and 135.69.) In addition, § 135.69(b) provides for the PIC to continue a flight towards an airport where hazardous conditions exist if (1) it may be reasonably expected that by the time of estimated arrival the conditions will have been corrected, or (2) there is no safer procedure. In the latter event, continuation is an emergency situation under § 135.19 (subsumed by proposed § 119.58), which allows the PIC to deviate from the rules of the part to the extent required to meet the emergency.

Sections 121.557, 121.559, and 135.19 on emergency procedures would be removed from this subpart and covered in proposed part 119.

Section 121.565 would be a new requirement for affected commuters now operating under part 135. This section requires a pilot in command to take certain actions in the event of an engine failure, such as to land at the nearest suitable airport, to report the engine failure to the appropriate ground station and keep the station informed of the flight's progress, and to send a written report to the operations manager (or other, as specified) if the pilot has not landed at the nearest suitable airport after the engine failure.

Passenger information. Both parts 121 and 135 contain requirements for the oral briefing of passengers on the use of seatbelts, smoking, and the location and use of emergency exits and equipment (see §§ 121.571, 121.333, 121.573, 121.585, 135.117, 135.127). The oral briefing must be supplemented by printed cards for each passenger and must contain diagrams showing emergency exits and additional instructions. The passenger information rules in parts 121 and 135 are similar, but part 121 is more specific in some respects, while part 135 is more specific in others. The FAA proposes to amend § 121.571(a) to bring over from § 135.117 requirements for additional passenger information for airplanes with no flight attendant. This additional information includes instructions on location of survival equipment, location and operation of oxygen equipment, location and operation of fire extinguishers, and placement of seat backs in an upright position for takeoffs and landings. The FAA proposes that the affected commuters otherwise comply with the part 121 rules on passenger information. The printed cards would need to be revised or supplemented to provide information on flotation cushions or other required flotation devices once they are installed.

A small change is proposed for § 121.571(a)(3) to allow a flight crewmember (instead of a flight attendant) to provide an individual briefing of a person who may need assistance in the event of an emergency, in cases where an airplane does not have a flight attendant.

Oxygen for medical use by passengers. Section 121.574 provides that a certificate holder may allow a passenger to carry and operate equipment for dispensing oxygen if, among other requirements, the equipment is furnished by the certificate holder. Under current § 135.91, the certificate holder may allow a passenger to carry and operate equipment for dispensing oxygen provided certain requirements are met. In addition, under part 121, the equipment must be part of a certificate holder's maintenance program; under part 135 it is required as part of the certificate holder's maintenance program only if the certificate holder owns the equipment. Section 135.91(d) contains a provision for permitting a noncomplying oxygen bottle provided by medical emergency service personnel to be carried on board the airplane; this provision would not be carried forward into part 121.

Part 121 requires the certificate holder to supply the oxygen to ensure that internal contamination of the pressurized oxygen does not occur. The contamination of the cylinder with a flammable material (grease, oil) could result in a serious fire or explosion when these cylinders are operated on a pressurized airplane. Under the proposal, the FAA would limit the use of oxygen units to those maintained by the air carrier as is presently provided in § 121.574. Most of the airplanes operated by the affected commuters are pressurized and frequently operate above 10,000 feet. The operating conditions and safety concerns are similar for part 121 operators and the affected commuters.

Alcoholic beverages. Sections 121.575 and 135.121 contain requirements controlling the serving or consumption of alcoholic beverages on airplane. The requirements are similar except for three additional requirements in § 121.575. Certificate holders are prohibited from serving alcohol to persons who have legal access to armed weapons and to persons who are being escorted by an armed law enforcement escort. Also, part 121 requires certificate holders to report any disturbances caused by people who appear to be intoxicated. Since these differences are minor and are not expected to impose a burden on affected commuters, the FAA proposes that affected commuters comply with the requirements of § 121.575.

Retention of items of mass. Section 121.576 requires that airplanes must have a means to prevent each item of galley equipment and each serving cart, when not in use, and each item of crew baggage, which is carried in the crew or passenger compartment, from becoming a hazard. Section 121.577 prohibits a certificate holder from moving an airplane on the surface or taking off unless such items are secure. Sections 135.87 and 135.122 require certificate holders to ensure that such items are secure before takeoff. The FAA proposes that the affected commuters comply with § 121.577, which is substantively the same as § 135.122.

Cabin ozone concentration. Section 121.578 sets maximum levels of ozone concentration inside the cabins of transport category airplanes operating above 27,000 feet. Commuter (and predecessor) airplanes do not, generally, operate at these altitudes; nevertheless, the FAA believes that these rules should apply whenever the altitudes are exceeded. The FAA proposes to amend § 121.578(b) to delete the references to transport category airplanes. Section 121.578(d) contains deviation authority if the certificate holder shows that compliance with the current rule is unreasonable either because of circumstances beyond its control or because of an unreasonable economic burden.

Minimum altitudes for use of autopilot. Sections 121.579 and 135.93 establish minimum altitudes for use of autopilots. The two sections are similar; however, part 135 does not specify weather requirements for an approach. In a current NPRM proposing to revise the minimum altitude for use of an autopilot (59 FR 63868, December 9, 1994), which is under consideration for the minimum altitude for autopilot use corresponds to the type certificate of the autopilot and altitude stated in the Airplane Flight Manual (AFM). If accepted as proposed, the AFM would establish guidance that would be edited and approved in the air carriers operations specifications.

Forward observer's seat. Section 121.581 requires a certificate holder to make available a seat on the flight deck of each airplane for use by the Administrator while conducting en route inspections. Comparable § 135.75 requires, for such inspections, a forward

observer's seat on the flight deck or a forward passenger seat with headset or speaker. Because airplanes in the 10- to 30-seat range may not have an observer's seat on the flight deck, the option of providing a forward passenger seat would be moved into part 121.

Authority to refuse transportation. Section 121.586 prohibits a certificate holder from refusing transportation to a passenger on the basis that the passenger will need the assistance of another person to move quickly to an exit in the event of an emergency, unless the certificate holder has established procedures for the carriage of such passengers and the passenger either fails to comply or cannot be carried in accordance with the procedures. Part 135 does not specifically prohibit a certificate holder from refusing transportation to such passengers nor does it specifically require procedures; however, § 135.23(q) requires that the certificate holder's manual contain procedures for the emergency evacuation of passengers who may need assistance. Because these procedures are currently required as part of the manual requirements of part 135, § 121.586 would not pose any burden on the certificate holder; rather it would clarify the conditions under which a certificate holder may refuse transportation.

Carry-on baggage. Requirements for the stowage of carry-on baggage aboard airplanes are found in §§ 121.589 and 135.87. There are three significant differences between the requirements in parts 121 and 135.

First, part 121 requires certificate holders to have an approved carry-on baggage program with which both the certificate holder and the passengers are required to comply.

Second, part 121 requires that carry-on baggage be scanned before boarding to ensure the size and amount of baggage is consistent with the program.

Third, no certificate holder may allow all passenger entry doors of an airplane to be closed in preparation for taxi or pushback unless at least one required crewmember has verified that each article of baggage is stowed in accordance with the requirements of that certificate holder's program.

The FAA proposes that the certificate holders upgrading to part 121 as a result of this NPRM would comply with the part 121 carry-on baggage rules. This would require the preparation and approval of a carry-on baggage program. Variations in the types of airplanes used or crewmember complement can be addressed in the program. For instance, procedures for stowing baggage on airplanes having overhead racks that are not certificated for carriage of carry-on baggage or cargo would be specified. Procedures for scanning baggage would be spelled out in the program, according to the type of operation. In addition, crewmember responsibilities for stowage of baggage for operations that do not require a flight attendant would be addressed. This program is necessary to assure that all certificate holders operating under part 121 have procedures to prevent an airplane from taking off with baggage that has not been properly stowed.

Airports. Section 121.590 provides that air carriers and pilots operating under part 121 must operate an airplane into a land airport that is certificated under part 139. As discussed under the "Major Issues" section of this notice, the proposed rule language would allow affected commuters into and out of other than part 139 airports pending legislation that would authorize the FAA to regulate airports (in a future rulemaking) that serve passenger-carrying operations of airplanes having a seating capacity of less than 30 passengers. Section 121.590 would be revised to incorporate pertinent requirements of § 135.229.

VI.B.16. Subpart U—Dispatching and Flight Release Rules

Subpart U, in conjunction with sections of subpart T, prescribes dispatching and flight release rules for domestic and flag operations. Sections 121.533, 121.535, and 121.537 prescribe who has operational control of flights for domestic, flag, and supplemental part 121 operations. In addition, §§ 121.533 and 121.535 require flight releases before a flight can take off. Subpart U prescribes who has dispatch and flight release authority, requires flight releases for supplemental operations, and specifies requirements rules for flight releases under certain conditions. All of these rules would be new requirements for all affected commuters.

Flight release authority: Supplemental. Section 121.597, which applies to supplemental operations, requires a flight release signed by the pilot when the pilot and the person authorized by the certificate holder to exercise operational control believe that the flight can be made safely. This would be a new requirement for affected commuters who conduct supplemental flights. Under part 135 releases are not required for either scheduled or on-demand flights.

Dispatch or flight release under VFR. Section 121.611 states that no person may dispatch or release an airplane for VFR operation unless the ceiling and visibility en route, as indicated by available weather reports or forecasts, are and will remain at or above applicable VFR minimums until the airplane arrives at the airport. Part 135 does not have a comparable release requirement, though for VFR over-the-top carrying passenger operations (§ 135.211), no person may operate an airplane unless weather reports or forecasts indicate that the weather at the intended point of termination meets certain visibility requirements.

Operations in icing conditions. Section 121.629 contains requirements for operations in icing conditions. This section requires a certificate holder to have an approved ground deicing/anti-icing program, and the certificate holder, including all personnel assigned duties, must comply with that program. The regulations prescribe the general content of the program, including what must be covered in ground training for flight crewmembers and other personnel. Section 121.629(d) provides that, in lieu of the program, a certificate holder may conduct a check from outside the airplane when conditions are such that frost, snow, or ice may adhere to airplane surfaces.

Section 135.227 prescribes the requirements for takeoff in icing conditions for part 135 operations. Parts 135 and 121 are similar. Part 135 allows the carrier the option to comply with part 121 deicing/anti-icing program requirements. Most affected commuters already comply with part 121 program requirements. Part 135 states that the certificate holder may not authorize a flight to takeoff in icing conditions unless the pilot has received the applicable training under § 135.341; the training requirements for part 121 (§ 121.629) and part 135 (§ 135.345) are identical. Under part 135, having a deicing/anti-icing program is only one of the options for taking off in icing conditions; other options are conducting a pretakeoff contamination check or having an approved alternative procedure. Since most of the affected commuters already have an approved deicing/anti-icing program that complies with part 121 requirements, the proposed rule would require all affected commuters to comply with the part 121 requirements.

Fuel reserves. Sections 121.639, 121.641, 121.643, and 121.645 contain fuel reserve requirements based on the type of operation to be conducted. These fuel reserve requirements do not distinguish between VFR and IFR operations. Section 121.639 requires 45 minutes of fuel reserve for domestic air carriers and for certain other air carrier operations.

Section 135.209 requires 30 minutes of fuel reserve for day VFR conditions and 45 minutes for night VFR conditions. Section 135.223 requires 45 minutes for IFR conditions.

The FAA proposes to require affected commuters to comply with the fuel reserve requirements of part 121 but recognizes that the proposed change could have an impact on operators that conduct operations in VFR conditions. Under the proposal these operations would have to have an additional 15 minutes of fuel reserve to be in compliance. The FAA invites comments on the impact the proposal would have on operators that conduct operations in VFR conditions.

VI.B.17. Subpart V—Records and Reports

Subpart V prescribes requirements for the preparation and maintenance of records and reports for all certificate holders operating under part 121. Although many of the requirements are identical to or similar to the recordkeeping requirements in §§ 135.63 and 135.65, part 121 requires additional information, including new records and reports. For instance, additional load manifest information is required under part 121.

Under the proposal, the most significant change in recordkeeping requirements would be the addition of records required in part 121 for a dispatch system. These include maintaining aircraft dispatcher records and dispatch release records. Affected commuters would be required to comply with all applicable dispatch recordkeeping requirements in subpart V.

Section 121.689 prescribes the requirements for flight release forms for supplemental operations under part 121. These requirements would be new for affected commuters who would conduct on-demand type operations under part 121 supplemental rules.

Maintenance log: Airplane. Section 121.701 requires that an airplane maintenance log be used to record the occurrences of mechanical irregularities and deferred maintenance items. The airplane maintenance log is required to be kept in the airplane. Both §§ 121.701(a) and 135.65(c) require that any person taking action concerning a reported or observed failure or malfunction of the airplane must record that action in the airplane maintenance log. The certificate holder is required to establish and include in its manual a procedure for keeping adequate copies of the log in the airplane. Section 135.65 additionally requires the pilot in command to ensure the status of each irregularity entered in the maintenance log. The FAA is not proposing that this requirement be added to part 121 because under existing part 121 rules, no airplane can be dispatched without a maintenance release that accomplishes the same purpose.

Mechanical reliability reports. The provisions of § 121.703(a) and § 135.415(a) that require mechanical reliability reports are virtually identical except for §§ 135.415(a)(12) and 121.703(a)(17). Subparagraph (a)(12) of § 135.415 provides the qualification that the landing gear extension should be "unwanted." The FAA proposes to adopt the part 135 language because the FAA is concerned with unplanned in-flight extensions of the landing gear. The § 121.703(a)(17) provision on emergency evacuation systems required under the proposal, which is absent from the corresponding part 135 rule, would be adopted for affected commuters. The part 121 standard is proposed because the FAA needs to know about all potentially defective evacuation systems so that the defect would be immediately corrected.

Paragraph 121.703(e) on transmitting reports is more detailed than the equivalent paragraph in part 135. Part 121 additionally requires records of the flight number and stage, the emergency procedures effected, the nature of the failure, the repair status of the affected part, and whether the airplane was grounded. The FAA is proposing to require that affected commuters follow the more detailed requirements of part 121 because the additional data would add information to the database. These reports would enhance the airplane airworthiness standards that are monitored to ensure that corrective action can be taken if unsatisfactory trends develop. The remaining provisions of § 135.415 are the same as those in § 121.703.

Paragraph (f) would be amended to delete an obsolete reference to § 37.17, which no longer exists in the regulations.

Mechanical interruption summary report. Section 121.705 requires that these mechanical interruption summary reports be submitted "regularly and promptly" but does not clearly define the standard for the timeliness of the submission. Part 121 operators have for many years had maintenance manual requirements that essentially required that these reports be submitted on a monthly basis. The equivalent part 135 requirement specifically calls for the monthly submission of these reports. The FAA proposes to require that affected commuters comply with the part 121 requirement in order to have the timing established in the operator's manual which allows for differences among operators. Section 121.705(b) contains a requirement that is not found in the corresponding § 135.417 section. That provision requires reporting premature engine removals. The FAA proposes to require affected commuters to comply with this requirement because of a need to track the reliability of engines. The FAA maintains a database of premature engine removals that would allow operators to predict engine life or the possible development of fleet-wide problems. Initially this database was limited primarily to part 121 operators of large airplanes with new engines. The FAA is expanding this database to cover most engine types. This provision provides for reporting mechanical interruptions that are not reported under other sections. The FAA needs these reports to obtain data by which airplane airworthiness standards are monitored and to ensure that corrective action can be taken if unsatisfactory trends develop.

Alteration and repair reports. Section 121.707 requires part 121 operators to submit to the FAA a copy of a report of each major alteration or major repair. Although corresponding § 135.439(a)(2)(vi) requires the retention of these reports but does not specifically require that they be submitted to the FAA, they are required to be submitted under part 43. Therefore, under the proposal affected commuters would comply with the requirements of § 121.707.

Airworthiness release or airplane log entry. Section 121.709 requires the certificate holder to prepare or cause to be prepared either an airworthiness release or an appropriate entry in the airplane log after the performance of maintenance, preventive maintenance, or alterations. The airworthiness release or log entry must be prepared in accordance with the procedures set forth in the certificate holder's manual. The current requirements in § 135.443 essentially mirror the requirements of § 121.709 so there would be minimum burden for affected commuters. Section 121.709(c) contains a provision that is not found in part 135. That provision requires that a copy of the airworthiness release be given to the pilot in command and that a certificate holder retain a copy for at least 2 months. The proposed rule would require affected commuters to comply with this provision. The FAA considers that this additional requirement is necessary to provide a system for the flightcrew to determine the airworthiness status of an airplane after maintenance has been performed and to determine the

airworthiness of the airplane prior to flight. The person providing an airworthiness release or airplane log entry is required to determine that all the requirements for inspection and airworthiness are satisfied.

Other recordkeeping requirements. New recordkeeping requirements for affected commuter operators, which the FAA does not believe would impose a significant burden, would be § 121.711, which requires a record of each en route radio contact between the air carrier and its pilots; § 121.713, which requires commercial operators to keep copies of contracts; and § 121.715, which requires reporting of in-flight medical emergencies.

VI.C. Proposed Part 119 Explanation

New part 119 was originally proposed in 1988 (53 FR 39853; October 12, 1988). It is being entirely republished in this NPRM because of the number of changes the FAA has made in the proposed rule language since 1988. The changes that are the result of the review of commuter operations are discussed earlier in the preamble under "Changes to part 119 as a result of this NPRM." In this section of the preamble the organization and substance of the entire part are summarized, along with an explanation of changes to the proposed rule language that have been made since 1988.

The first objective of the proposed rule is to establish a permanent guide in a new part 119 that would enable persons who provide transportation of people or cargo to determine what certification, operations, maintenance, and other regulatory requirements they must comply with. A second objective is to determine certification and operating requirements.

This proposed rule does not address the certification rules found in parts 125, 133, or 137.

The proposed rule would accomplish the following:

(1) Incorporate SFAR 38–2 into a new part 119 as Subparts A and B;

(2) Revise certification procedures now in parts 121 and 135 and consolidate them in a new part 119 as Subpart C;

(3) Revise wet leasing requirements;

(4) Provide definitions for terms such as "direct air carrier" and "kind of operation;"

(5) Provide a roadmap for certificate holders to lead them to the operating rules in part 121, 125, or 135 that they must comply with for the kind of operations that they conduct;

(6) Clarify the requirements for operations specifications by adding definitions for terms such as "domestic operation" and "supplemental operation;"

(7) Add management requirements for domestic and flag operations conducted under part 121 consistent with those that now exist for supplemental operations conducted under part 121, and consolidate part 121 and part 135 management requirements;

(8) Rescind part 127 and any requirements that pertain solely to helicopters in part 121, Subparts A through D; and

(9) Throughout part 121, Subparts A through D and part 135, Subpart A, change various references from CAB requirements to DOT requirements, change language where needed, and make incidental editorial changes.

In accomplishing the above changes, the FAA has edited current regulatory language for clarity and consistency.

Organization of New Part 119. Proposed new part 119 reorganizes into one part many requirements that now exist in SFAR 38–2 and in parts 121 and 135. Subpart A of proposed part 119 sets forth in general terms the applicability of the part, requirements and prohibitions covered by the part, definitions for terms used in Subchapter G, the types of certificates issued, and general provisions concerning operations specifications. Subpart B provides the guidelines and benchmarks which determine what operating requirements apply to each kind of operation. Among other things, subpart C updates and consolidates into a central location the certification rules now found in SFAR 38–2 and in parts 121 and 135. These subparts are discussed in more detail below.

Subpart A—General

Proposed Subpart A provides that part 119 would apply to persons operating or intending to operate civil aircraft as an air carrier or commercial operator conducting passenger operations, cargo operations, or both. A person would be issued only one certificate and all operations would be conducted under that certificate regardless of the kind of operation or the class or size of the aircraft. Persons authorized to conduct operations as an air carrier (i.e., in interstate, overseas, and foreign common carriage) would be issued an Air Carrier Certificate, currently referred to as "Air Carrier Operating Certificate." Persons who conduct intrastate common carriage operations, persons who conduct non-common carriage operations as a commercial operator, and persons conducting certain other operations not involving common carriage would be issued an Operating Certificate.

The FAA would issue operations specifications reflecting the kind of operations to be conducted. The operations specifications would prescribe the authorizations, limitations, and procedures under which each type and size of aircraft would be operated.

The FAA would not issue certificates to foreign air carriers but would continue to issue operations specifications in accordance with part 129 to foreign air carriers who possess economic authority to conduct common carriage operations within the United States.

Section 119.3—Definitions. To clarify which operational rules apply to specific kinds of operations, proposed § 119.3 defines several terms. Many of the aspects of these new definitions related to this NPRM, e.g., "scheduled operation," "domestic operations," "flag operations," "supplemental operations," "on-demand operations," and "commuter operations" have been previously discussed. Commenters should note that in this proposal the FAA has attempted to include in the definition of "scheduled operation" elements that would distinguish it from nonscheduled operations for compensation or hire in common carriage. The FAA considers the distinguishing factors of a scheduled operation are that departure location, arrival location, and departure time are determined by the certificate holder, and the certificate holder offers such operations in advance (i.e., holds out). In contrast, a nonscheduled common carriage operation for compensation or hire, i.e., on-demand operations and supplemental operations, are characterized by a negotiation in which the customer or customer's representative negotiates the departure, departure time, and arrival location. The only holding out that a nonscheduled common carriage operator might engage in would be letting others know that it would be available for such things as charter flights and other operations in which departure time, departure location, and arrival location are negotiated.

Many of the other definitions are carried over from SFAR 38–2 and are self-explanatory. Some terms and definitions, however, would be modified from SFAR 38–2 to make them consistent with this codification and the changes affecting commuter operations. Under SFAR 38–2, the following terms are used: "domestic air carrier," "supplemental air carrier," and "commuter air carrier." In this proposal, domestic operation, supplemental operation, and commuter operation would cover not only air carriers, but

also intrastate commercial operators engaged in common carriage. The proposed definition for "domestic operation" includes intrastate common carriage operations within Hawaii and Alaska, which presently follow the rules for flag operations. This change would standardize the requirements for all U.S. operators conducting intrastate scheduled operations under part 121.

The FAA proposes to introduce a new definition—"noncommon carriage"—to more clearly recognize and distinguish that certain operations for compensation or hire are accomplished without a prior holding out. For instance, many operations that are conducted under part 125 are "noncommon carriage" in that the customer pays for the transportation by air, but the operator neither held out a schedule of flight times nor held out that it was available for negotiating departure time, departure location, and arrival location. It should be noted, however, that part 125 operations are not limited to noncommon carriage operations. Assuming an airplane has a seating configuration of 20 or more passenger seats or maximum payload capacity of 6,000 pounds or more, part 125 applies in situations "when common carriage is not involved." The FAA believes that it is important to clarify the meaning of "when common carriage is not involved" and its regulatory twin "operations not involving common carriage." Both of those phrases mean not only "noncommon carriage" but also operations in which persons or cargo are transported without compensation or hire and operations not involving the transportation of persons or cargo. Readers are reminded that for those airplanes that are usually used by certificate holders in parts 121, 135, or 137 operations, part 125 does not apply when those airplanes have no passengers or cargo (certificate holders operate such flights under part 91). Additionally, part 125 does not apply in other situations where part 91 alone applies, e.g., an exclusive flight for the free transportation of company employees.

The FAA is proposing a new term—"wet lease." Existing § 121.6 describes a wet lease situation without using the "wet lease" term. This situation describes a lease involving an airplane and at least one pilot flight crewmember. In the proposed new term, a wet lease would be defined as one involving the lease of an entire airplane and at least one crewmember. Thus, if a person leases an airplane and any crewmember (e.g., flight attendant, flight engineer, or pilot), it would be considered a wet lease. For an articulation of how this new definition applies operationally, see the discussion concerning § 119.53.

The definition of "direct air carrier" is included in this NPRM because the FAA finds it necessary to make a distinction between the direct air carrier, with operational control over flights, and the indirect air carrier (for example, a freight forwarder) who is not authorized to exercise operational control over flights.

New definitions have also been added for clarity, such as definitions for "passenger carrying," "principal base of operations," and "kind of operation."

The proposed definitions also include terms which would enable operators to distinguish clearly among kinds of operations. The FAA has noted confusion over certain terms in the past and intends to eliminate the confusion by defining the proposed terms clearly and, where needed, including clarification in Subpart C certification requirements.

"Maximum payload capacity." In January 1995, the FAA issued a draft Advisory Circular (AC) 120–27c, "Aircraft Weight and Balance Control," containing proposed guidance for determining the standard average weights for crewmembers. The proposed standard average weights were based on recent data obtained from air carrier surveys. The FAA proposes to amend the current standard allowance for crewmembers—200 pounds for each required crewmember. The proposed standard allowances for crewmembers would be 180 pounds for male flight attendants, 130 pounds for female flight attendants, or 140 pounds average for all flight attendants. In addition, for male flight crewmembers, the standard average weight would be 180 pounds each, and for female flight crewmembers, 130 pounds each. These standard average weights do not include any carry-on baggage. If this NPRM concerning the standard average weights for crewmembers is not adopted, the FAA would amend the draft AC to reflect the existing regulations that specify a weight allowance of 200 pounds for each required crewmember. Thus, the final AC would accurately reflect what the regulations allow.

As used within the proposed part, these definitions, in conjunction with proposed changes to certification requirements that would be incorporated in Subpart C, would clarify which operators must obtain Air Carrier Certificates or Operating Certificates.

Section 119.5—Certifications, authorizations, and prohibitions. In general, § 119.5 (a), (b), and (c) identify the type of certificate—an air carrier certificate or an operating certificate—the Administrator would issue to different persons depending on the nature of their operations. In § 119.5(d), the FAA proposes to issue only one certificate to an operator engaging in common carriage, regardless of the kind of operation or the class or size of the aircraft to be operated. For example, if an operator used Boeing 757 aircraft in scheduled operations both within the U.S. and abroad, that operator would be issued one air carrier certificate and that certificate with its operations specifications would authorize these two kinds of operation (i.e., domestic and flag). If that same operator used airplanes with a seating capacity of 9 or less passenger seats in scheduled operations and used another make and model airplane in nonscheduled common carriage operations, only one air carrier certificate would be issued, but the certificate and the operations specifications would contain two additional kinds of operations, i.e., commuter and on-demand. See §§ 119.37(f) and 119.49 (a)(5), (b)(5), and (c)(4).

In § 119.5(e), the FAA proposes to issue only one certificate to an operator engaging in noncommon carriage, regardless of the kind of operation, or the class or size of the aircraft to be operated. Thus, a person who conducts noncommon carriage operations with aircraft configurated with more than 20 passenger seats or a payload capacity of 6,000 lbs. or more, (for which part 125 would apply) and also aircraft configurated with fewer than 20 passenger seats or a payload capacity of less than 6,000 lbs. (for which part 135 would apply) would only be issued one operating certificate.

Under § 119.5(f), a person conducting more than one kind of operation must conduct each operation in accordance with the FAR applicable to the kind of operation and the operations specifications issued for the kind of operation.

In § 119.5(h), the FAA proposes to prohibit a person who holds an operating certificate authorizing noncommon carriage from conducting any operation in common carriage. Similarly, the FAA proposes that a person holding an air carrier certificate or an operating certificate authorizing common carriage operations shall not conduct any noncommon carriage operations. The essential difference between a common carriage operation and a noncommon carriage operation is the presence or absence of a holding out. The FAA believes that an operator engaged in common carriage (holding out) cannot unequivocally claim that it

can engage in a noncommon carriage operation that would not have benefited from the holding out activities of the common carriage operation.

Finally, in § 119.5(j), the FAA proposes to prohibit certificate holders that operate under parts 121 and 135 from operating in geographical areas unless the operations specifications specifically authorize operations in those areas.

Section 119.7—Operations specifications. In § 119.7, the FAA identifies items that must be contained in each certificate holder's operations specifications and restates the existing provision that operations specifications are not part of a certificate.

Section 119.9—Use of business names. In this section, the FAA proposes to prohibit certificate holders that operate airplanes under part 121 or 135 from using a business name other than the name appearing in a certificate holder's operations specifications. The FAA proposes that the name of the certificate holder conducting the operation must be displayed on the airplane and clearly visible and readable to a person standing on the ground at any time except during flight time. If the logo or livery of the airplane clearly identifies the certificate holder, no other identification is needed. The purpose of this proposed requirement is for the FAA to be able to identify, primarily for purposes of ramp inspections, those who appear to have operational control of the airplane. Because this regulation would apply to airplane ranging in size from a small reciprocating-engine-powered airplane carrying four persons to a Boeing 747, it is not practical for the FAA to define the size letters that would be required. Any means of identification which satisfies this requirement is acceptable, including signs temporarily affixed in windows or on the door or fuselage of the airplane.

With regard to the issue of whether the logo of the freight forwarder may also appear on the airplane, the FAA believes that the logo of the freight forwarder may remain on the airplane as long as the name of the certificate holder who has operational control is clearly identified.

Because display of the operator's business name may pose unacceptable security risks for U.S. certificate holders who conduct operations in certain foreign countries, the FAA proposes that the Assistant Administrator for Civil Aviation Security may authorize certain certificate holders to conduct operations without complying with the requirement to display, on the airplane, the name of the certificate holder operating it.

Proposed Subpart B—Applicability of Operating Requirements to Different Kinds of Operations Under Parts 121, 125, and 135 of This Chapter

Proposed subpart B sets forth the operating requirements that would apply for specific kinds of operations. The requirements of this subpart must be read in conjunction with the definitions for different kinds of operations found in § 119.3, specifically the definitions for "scheduled operation," "domestic operation", "flag operation," "supplemental operation," "commuter operation," "on-demand operation," "noncommon carriage," and "when common carriage is not involved." Significant changes have been made to these definitions. Changes which relate to affected commuters are described earlier in the preamble under "Changes proposed for part 119 as a result of this NPRM." Other changes to definitions in part 119 are explained above under "Definitions."

Proposed § 119.21 directs domestic, flag, and supplemental operations to be conducted under the rules in part 121 for those kinds of operations, while commuter and on-demand operations are to be conducted under part 135. Under 119.21(a) the Administrator may permit certain intrastate Alaskan operations to be conducted under some of the flag requirements. Based on a showing of safety in air commerce, the Administrator may permit some operations among the Aleutian Islands and some operations between the Aleutian Islands and the rest of Alaska to be conducted under the applicable rules for flag operations contained in Subpart U of part 121. Also, under § 119.21(a)(3) it is proposed that any certificate holder conducting supplemental operations under part 121 between airports that are also served by the air carrier's domestic or flag operations may be authorized or required to conduct those operations under the domestic or flag rules. In addition, it is proposed that similar existing provisions be retained that certain all-cargo operations that regularly and frequently serve the same two airports may be required to be conducted under domestic or flag rules.

Section 119.23 directs operations when common carriage is not involved using airplanes having a passenger-seating configuration of 20 seats or more, excluding any required crewmember seat, or a payload capacity of 6,000 pounds or more, to be conducted under part 125. Noncommon carriage operations conducted with airplanes having a passenger-seating configuration of less than 20 seats, excluding any required crewmember seat, and a payload capacity of less than 6,000 pounds, are to be conducted under the rules of part 135 that apply to on-demand operations. "When common carriage is not involved" and "noncommon carriage" are explained under "Definitions" above.

Section 119.25 directs all rotorcraft operations to be conducted under part 135 regardless of the size or seating capacity of the rotorcraft. However, external-load operators and agricultural aircraft operators must comply with part 133 or part 137 of the FAR, respectively.

This NPRM proposes to rescind part 127. Rotorcraft operators that previously operated under part 127 would be directed in Subpart B to conduct those operations under part 135 since those regulations have been more recently updated and, therefore, are more current and provide a more appropriate level of safety.

Proposed Subpart C—Certification Requirements and Operations Specifications

The proposed new part 119, Subpart C, contains the procedural certification requirements and operations specifications requirements for all operations conducted under parts 121 and 135. Many of the requirements in proposed Subpart C were drawn from certification and operations specifications sections in—

(1) Part 121, Subparts A, B, C, and D;
(2) Part 135, Subpart A; and
(3) SFAR 38–2.

The requirements are thus consolidated in proposed Subpart C and invalid references to the CAB and other obsolete references are changed or deleted.

The proposed rules applicable to part 121 operations and part 135 operations have been combined wherever possible. In rare instances, this has necessitated extending part 135 certification requirements to part 121 or vice versa.

Certain additions or revisions to current rules are being proposed which would clarify certification procedures and facilitate FAA processing and inspection functions. The discussion below addresses only important additions or revisions.

Section 119.33—General requirements. Proposed § 119.33(c) would require an applicant for a certificate to conduct the proving tests required for certification under the appropriate requirements of part 121 or part 135. The purpose of the tests is to demonstrate (as one of the last steps in the certification process) that the applicant is qualified and eligible to receive a certificate. Currently an

applicant is required to obtain a deviation from part 125 (for airplanes with a passenger-seating configuration of 20 or more or a maximum payload capacity of 6,000 pounds or more) to conduct proving tests under the authority of part 91 and the appropriate requirements of part 121 or part 135. This change would permit applicants to complete the certification process without having to obtain either a deviation or certification to conduct operations under part 125. It is also proposed to amend §§ 121.163, 125.1, and 135.145 to make the proving test requirements consistent in those parts.

Section 119.35—Certificate application. Proposed § 119.35 would require a certificate applicant to submit the application 90 days before the intended date of operation rather than 60 days, as presently required. A 90-day submission requirement more realistically reflects the actual time the agency needs to process applications and documentation. As discussed in Advisory Circular (AC) 120–49, there are five phases in the certification process. The applicant begins with a preapplication statement of intent and proceeds through the necessary preparation of documents, and demonstration and inspection of the aircraft. Whether this schedule proceeds on time is, in large part, controlled by the applicant. As stated in the AC, "Failure to accomplish an item or event in a satisfactory manner or in accordance with the schedule of events could delay the certification." The FAA encourages applicants to provide the certification project manager with draft materials during the preapplication period so that problems are not incurred during formal review of the application package. The 90 days, however, refers to the period of formal review of the completed application package. The agency finds that this length of time is necessary for proper review of the application.

The FAA points out that under 49 U.S.C. 44705, the Administrator of the FAA is responsible for ensuring that each air carrier "properly and adequately is equipped and able to operate safely." In order to fulfill this safety responsibility, the FAA must exercise the authority to request any information to make a determination of an air carrier's fitness to operate.

Paragraphs (c) through (h) of § 119.35 are proposed recodifications of §§ 121.47, 121.48, and 121.49. Generally speaking, these sections deal with the disclosure of financial information as well as the disclosure of people and entities that would control the new certificate holder. It should be noted that those three sections and their proposed recodification in § 119.35(c) through (h) only apply to persons who are not air carriers and who are applying for authority to engage in intrastate common carriage but have not undergone a fitness review by the Department of Transportation. The language has been updated to make it consistent with new definitions and certification requirements applicable to these operators. For persons applying for authority to conduct intrastate common carriage operations under part 135 these would be new requirements. The FAA believes these requirements are necessary because financial information, management information, and information concerning who controls the certificate holder can reveal potential shortcomings in the applicant's ability to conduct a safe operation.

Section 119.41—Amending a certificate. Proposed § 119.41 contains new procedures for making administrative changes to the operating certificate. These procedures are modeled after the procedures used to amend operations specifications and would standardize the amendment process.

In addition, under § 119.41 applications for amendments to certificates would have to be submitted 15 days in advance of the time the operator wants the amendments to be effective, unless the Administrator approves a shorter period when circumstances warrant (i.e., minor or routine amendments).

Section 119.45—Use of operations specifications. Section 119.45 is a recodification of § 121.75.

Section 119.47—Maintaining a principal base of operations, main operations base, and main maintenance base; change of address. Proposed § 119.47 requires that a certificate holder maintain a principal base of operations and also allows it to establish a main operations and main maintenance base. "Principal base of operations" is defined in § 119.3 as "the primary operating location of a certificate holder as established by the certificate holder." Air carriers with large operations may have other bases located with or separate from the principal base of operations. The FAA proposes to refer to these bases as "main operations base" and "main maintenance base." New automated operations specifications would provide for this information. Written notification must be provided to the certificate-holding district office before establishing or relocating a principal base of operations, a main operations base, or a main maintenance base. The principal base of operations, the main operations base, and the main maintenance base may be at the same location. This requirement is derived from § 135.27(a) which requires that a certificate holder maintain a principal business office. The proposed terminology clarifies that the FAA needs to know the location of the primary point of contact between the FAA and the certificate holder. Certificate holders would no longer be required to report changes of address for business offices. Elimination of this requirement does not affect the carrier's responsibility under 49 U.S.C. 46103 to notify the FAA and Office of the Secretary of Transportation (OST) of an address for service of process (see proposed § 119.49(a)(1), (b)(1) and (c)(1)).

Section 119.49—Contents of operations specifications. Proposed §§ 119.49(a)(2), (b)(2), and (c)(2) require that each certificate holder obtain operations specifications that list other business names under which the certificate holder may operate. The requirement is proposed to facilitate enforcement and surveillance functions. Current rules under part 135 already require certificate holders to list their alternate business names on their operating certificates. Current part 121 places no restrictions on the use of alternate business names; however, air carriers are prohibited in the economic regulations from using any names that have not been specifically authorized by OST.

The FAA proposes to extend the requirement on alternate business names to part 121 certificate holders to enhance the agency's ability to maintain proper surveillance over these operations and to further prohibit a carrier from using any name not authorized by the Secretary of Transportation. Before deregulation, the number of large carriers operating under part 121 was relatively limited and the activities of these carriers were well defined and stable. Because of economic deregulation, such carriers have proliferated and many conduct operations under one or more trade names. Thus it is necessary for such names to be specifically listed on a carriers operations specifications.

Proposed §§ 119.49 (a)(3), (b)(3), and (c)(3) add a requirement that operations specifications contain a reference to the economic authority issued by OST. The requirement that a carrier have the necessary economic authority is not new. The proposal to include this reference in the operations specifications is intended to clarify that the requirement still exists

notwithstanding the demise of the CAB. The effect of this proposal is to tie the extent of authority contained in a certificate holder's operations specifications to the extent of any required economic authority.

Proposed § 119.49(a)(4) requires a certificate holder conducting domestic, flag, or commuter operations to obtain operations specifications that list each type of aircraft authorized for use and each aircraft's registration markings and serial number. In current § 121.25, for domestic of flag, the registration markings and serial number are not required. The requirement to list registration markings does exist in current § 121.45 for supplemental operations and in all of part 135. The new requirement is proposed in the interest of consistency and to facilitate FAA enforcement and surveillance functions. Any burden of the new requirement would be offset by a proposed provision in §§ 119.49(a)(4)(i), (b)(4)(i), and (c)(6)(i) that would allow certificate holders to submit a current list, which could be a computerized list of aircraft and regular airports and to reference that list on the operations specifications. Current format and procedures for approving operations specifications require that each aircraft be identified on the appropriate form. This current format does not allow use of computer printouts and can lead to excessively lengthy operations specifications.

Section 119.51—Amending operations specifications. Under § 119.51 applications for amendments to operations specifications would have to be submitted 15 days in advance for minor or routine amendments; however the FAA proposes to require that certificate holders file applications to amend operations specifications at least 90 days before the date proposed by the applicant for the amendment to become effective in cases of mergers; acquisition or airline operational assets that require an additional showing of safety (e.g., proving tests); changes in the kind of operation as defined in § 119.3; resumption of operations following a suspension of operations as a result of bankruptcy actions; or the initial introduction of aircraft not before proven for use in air carrier or commercial operator operations. It has been the FAA's experience that these types of major changes do take at least 90 days for the agency to determine that, as a result of the change, the applicant is properly and adequately equipped and is able to conduct a safe operation.

Proposed § 119.51(e) is basically a recodification of the emergency amendment procedures for operations specifications that already exist in § 121.79. Under § 121.79, if the FAA Flight Standards District Office (FSDO) finds that there is an emergency requiring immediate action, then the amendment becomes effective immediately and any petition for reconsideration to the Director, Flight Standards Service, does not stay the effectiveness of the amendment. Under § 135.17, although the FSDO can issue an amendment that is effective immediately, the filing of a petition for reconsideration stays the effectiveness of the amendment. However, if the Director finds there is an emergency requiring immediate action, then the Director notifies the certificate holder that the amendment is effective upon the date the certificate holder receives the director's finding. In this NPRM, the FAA proposes to adopt—for 121 and 135 operations—the same procedures for emergency amendments to operation specifications. Because safety may require an immediate change to operations specifications for part 135 operations, the FAA has decided to propose a procedure whereby the on-site inspectors make the initial determination that an emergency exists. The proposed procedure change would, like current part 121 procedures, not result in a stay simply because the certificate holder petitioned for a reconsideration of the amendment.

Section 119.53—Wet leasing of aircraft. Proposed § 119.53 on wet leasing would be revised from current § 121.6 to do the following: (1) Clarify that the leasing requirements pertain only to wet leasing (which is defined in § 119.3 as a lease of an aircraft that includes the provision of any crewmember); (2) extend the wet leasing requirements to part 135 operations; (3) prohibit a wet lease from a foreign air carrier or any other foreign person; (4) prohibit a wet lease from any person not authorized to engage in common carriage; (5) specify that the Administrator, upon approval of the wet lease, would determine which party to the agreement has operational control and would amend the appropriate operations specifications of both parties, if necessary; and (6) allow a wet lease charter flight to transport passengers who are stranded because of the cancellation of their scheduled flight, provided that the wet lease flight is authorized by OST or the Administrator, as applicable, and that the charter flight is conducted under the rules applicable to a supplemental or on-demand operation. These clarifications reflect for the most part current administrative procedures.

Proposed § 119.53(e) would add a provision to prohibit a certificate holder from conducting any type of flight, not specified in its operations specifications, for another certificate holder. The purpose of this provision is to emphasize that a certificate holder may not contract to perform any flight it is not authorized to perform by its own operations specifications. This means that a certificate holder that agrees to perform scheduled flights for another carrier under a wet lease must conduct those operations under the domestic or flag rules of part 121, or commuter rules of part 135, just as the original carrier would have. To do this it must have operations specifications authorizing it to perform domestic, flag, or commuter rules just as the original certificate holder would have.

For example, airline A conducts domestic operations between New York and Miami. Because of unanticipated problems, it finds it is unable to perform these flights for a period of 3 days. It arranges with airline B to operate these flights under wet lease, in which airline B retains operational control of the conduct of the flights. Airline B must operate these flights under the rules in part 121 applicable to domestic operations, just as airline A would have to do, and airline B must have operations specifications authorizing it to conduct domestic operations.

If the requirement for appropriate operations specifications is not maintained, an operator could conduct "scheduled" operations through wet leases with several carriers authorized to conduct only supplemental operations. In addition, an operator might be induced to undertake an overly ambitious schedule of flight operations with the expectation that any required augmentation could be quickly obtained through a wet lease with a carrier authorized to conduct only supplemental operations. Because the frequency and regularity of a scheduled operation require different infrastructure, contractual arrangements with operators flying under the supplemental or on-demand rules cannot be tolerated.

In addition, § 119.53(e) requires that these substitute operations be conducted at ground locations that are: (1) Between airports for which the substitute certificate holder holds authority for scheduled operations or (2) within geographical areas for which the substitute certificate holder has authority for conducting supplemental or on-demand operations.

The FAA recognizes that cases may occur where a certificate holder conducting scheduled operations is

forced to cancel a flight and finds it impractical on extremely short notice to arrange for a substitute carrier with operations specifications that fully meet the proposed requirements. In the rare situation where passengers could be stranded, the FAA and OST have agreed to procedures that would give the passengers the option of taking a charter flight in place of the flight originally scheduled. In such a situation, the operator providing the substitute flight would have to obtain a waiver of 14 CFR part 380 requirements from OST based on an emergency need. See proposed § 119.53(f). The passengers would then be given the option of making their own arrangements, working out arrangements with the original carrier, or taking the charter flight. Each passenger who elects to take the emergency charter flight would be given an appropriate ticket (or other flight document) by the charter operator before the passenger boards the charter flight aircraft. The operator of this charter flight would have operational control and would conduct the flight under the supplemental or on-demand rules, as applicable. Comments are solicited on whether this procedure is adequate to cover any potential hardships.

Section 119.55—Obtaining deviation authority to perform operations under a U.S. military contract. This section contains various requirements for an operator who performs military contract services, involving deviations from their normal operations. These requirements include, among others, (1) an application requesting authority to perform the service, (2) certification by the Department of Defense that the service cannot be performed without the deviation, and (3) an appropriate amendment to the certificate holder's operations specifications by the Administrator. Many of these requirements are currently set forth in § 121.57, which applies only to supplemental operations.

In this NPRM, the FAA is proposing a new procedure in order to obtain deviation authority to perform under a U.S. military contract. Under this proposed procedure, the certificate holder must submit its request for deviation authority to the Department of Defense's Air Mobility Command (AMC). AMC would review the requests and forward the carriers' consolidated requests, along with AMC's recommendations, to the FAA for review. The FAA is making this proposal because during the Desert Shield/Desert Storm operations, the agency was inundated with requests for deviations. The FAA believes that the AMC has the resources to consolidate these requests, identify the specific FARs from which relief is sought, and evaluate the requests to determine whether the relief sought would be needed to accomplish the military mission. The FAA believes that this proposed procedure would enable the agency to process these requests more efficiently, should the need arise in the future.

Emergency Operations (Sections 119.57 and 119.58). The FAA is proposing two new sections concerning emergency situations. These two new sections are generally recodifications of §§ 121.57(c), 121.557, 121.559, and 135.19. On the one hand, § 119.57 is designed to address emergency situations in which it is impossible for the certificate holder planning to conduct emergency operations to act without complex and thorough planning. For example, § 119.57 would most often be used to respond to natural disasters such as massive floods and earthquakes. On the other hand, § 119.58 is designed to address an emergency situation in which complex and thorough planning are not possible because of the nature of the emergency. In other words, the nature of the emergency may be such that unless immediate action is taken, all would be lost, and any delayed action would be futile. Readers are reminded that in pure part 91 operations, § 91.3 applies.

Section 119.59—Conducting tests and inspections. Proposed language has been included in § 119.59(b)(1) and (e) to emphasize both the authority of FAA inspectors to gain access to a certificate holder's books and records and the fact that a certificate holder risks suspension of part or all of its operations specifications if it fails to provide that access. This language is an important reminder of the FAA's statutory authority and duty to determine whether an operator continues to be properly equipped to comply with the FAR and whether the operator can operate safely. Without access to those records, the FAA cannot fulfill its safety mission. The proposed paragraph makes explicit the intent of present §§ 13.7 and 121.81, Subpart V of part 121, and § 135.63. The purpose of the principal base of operations is for each certificate holder to provide to the FAA one location that the FAA would use as its main point of contact. It is the focus of liaison between representatives of the FAA and the operational management of the certificate holder. The FAA requires notification when this location changes so that it can adjust its staff accordingly. Proposed § 119.59(b)(1) would require that the operations specifications and certificate must be maintained at the principal base; other records must be identified in a current listing at the principal base that shows the location and person responsible for each individual report and record.

Section 119.63—Recency of operation. Proposed § 119.63 would prohibit a certificate holder from conducting a kind of operation if that kind of operation has not been conducted for a period of 30 consecutive days. To resume that kind of operation the certificate holder must advise the Administrator at least 5 consecutive calendar days prior to resumption of that kind of operation and make itself available for any FAA reexamination that the FAA considers necessary. This requirement is being proposed because the FAA believes that the safety requirements for a particular kind of operation might not be met adequately by an operator that does not conduct that kind of operations for that length of time. Safety requires at least 5 days notice so that the FAA has the opportunity to conduct an inspection or reexamination to determine whether the certificate holder remains properly and adequately equipped and able to conduct a safe operation. Unless the FAA suspends or revokes the operator's certificate or withdraws the authorization in the operations specification for that kind of operation, the certificate holder may resume that kind of operation on the sixth consecutive calendar day after it notified the FAA of its plans to resume that kind of operation. Even if the FAA decides not to conduct a reinspection or a reexamination during that 5-consecutive-calendar-day period, the certificate holder may nonetheless resume operations on the sixth consecutive calendar day after the notification. For seasonal operators, advance planning and coordination with the certificate holding district office would make resumption of operations smoother.

Management Requirements Proposed For Part 119 (Proposed Sections 119.65 through 119.71). Currently the FAA has specific regulations governing qualifications for the management personnel of supplemental air carriers and commercial operators (§§ 121.59–121.61) and air taxi/commercial operators (§§ 135.37—135.39). Part 121 does not have specific regulations governing management personnel of domestic and flag carriers. Under the authority of 49 U.S.C. 44705 and as stated in § 121.27(a)(2) of the FAR, the Administrator must find that "the applicant is properly and adequately equipped and able to conduct a safe

operation in accordance with this part." To fulfill this responsibility, it is necessary to propose standard management personnel qualifications for each certificate holder operating under part 121 of the FAR.

The proposed rule would consolidate management personnel requirements for operations conducted under part 135 or part 121 into new part 119. In proposed §§ 119.65 and 119.67 management personnel requirements would be established for all operations conducted under part 121, including domestic and flag operations, as well as supplemental operations.

The proposed management personnel requirements for operations conducted under part 135 (§§ 119.69 and 119.71) would be substantially the same as those currently in §§ 135.37 and 135.39. The proposed management personnel requirements for operations conducted under part 121 (§§ 119.65 and 119.67) would be similar to those currently in §§ 121.59 and 121.61, which now apply only to supplemental operations.

The only significant changes under the proposed management requirements for part 121 and part 135 would be as follows:

• *Director of safety.* As previously discussed, the FAA is proposing that each certificate holder that conducts operations under part 121 must have a director of safety. This person would be responsible for keeping the highest management officials of the certificate holder fully informed about the safety status of the certificate holder's entire operation. The FAA proposes to eliminate the position of general manager, which is presently required for certificate holders who conduct supplemental operations under part 121.

• *Director of operations.* Current §§ 121.61(a)(1) and 135.39(a)(1)(i) require that a director of operations hold or have held an airline transport pilot (ATP) certificate. Proposed §§ 119.67(a) and 119.71(a) require that a director of operations currently hold an ATP. This change reflects current administrative procedures; an ATP certificate no longer has an expiration date and is revoked only for cause. However, the requirement does not mean that the director of operations must currently meet medical certification requirements.

Current § 121.61(a) requires a director of operations to have at least 3 years of experience as a pilot in command (PIC) of a large airplane or have 3 years experience as a director of operations of an operation using large airplanes or a position of comparable responsibility. In the 1988 NPRM for a new part 119 and again in this NPRM, the FAA proposes for § 119.67(a) to require a director of operations to have both 3 years experience as a PIC of an aircraft under part 121 or part 135 and 3 years supervisory experience in a position that exercised control over any operations conducted with aircraft under part 121 or part 135. This change would assure that a director of operations under part 121 has both the technical and management expertise necessary to direct operations of airplanes used in part 121.

Since 1988, the FAA has decided to propose an additional eligibility requirement for a first-time director of operations and a first-time chief pilot. (There is a later discussion of the eligibility requirements for a chief pilot.) The FAA is proposing that certain experience for the director of operations have been obtained recently. In the case of a person becoming a director of operations for the first time, the FAA is proposing that the PIC experience in large aircraft be recent, i.e., 3 years of experience within the past 6 years. (See § 119.67(a)(3)(i).) Additionally, for all directors of operation under part 121, the minimum of 3 years of supervisory or managerial experience must have been obtained within the last 6 years. (See § 119.67(a)(2).)

Current § 135.39(a)(2) requires that the director of operations for a certificate holder who is not conducting any operation for which a PIC is required to hold an ATP certificate must hold a commercial pilot certificate. Proposed § 119.71(b)(1) would revise the requirement to "a commercial pilot certificate with an instrument rating" to ensure that a director of operations has at least minimum experience in instrument flying.

Additionally, for operations conducted under part 135, the FAA proposes that the director of operations have the following experience:

(1) At least 3 years of supervisory or managerial experience within the last 6 years, in a position that exercised operational control over any operations conducted under parts 121 or 135; or

(2) For a person with previous experience as a director of operations, at least 3 years experience as a PIC of aircraft operated under 121 or 135; or for a person becoming a director of operations for the first time, the 3 years of PIC experience must have been obtained within the past 6 years.

• *Director of maintenance.* Current § 121.61(c) requires that a director of maintenance hold a current mechanic certificate with either an airframe or powerplant rating. Current § 135.39(c) requires that a director of maintenance hold a current mechanic certificate with airframe and powerplant ratings. In order to standardize the certificates required for the director of maintenance, proposed § 119.67(c) and 119.71(e) would require that a director of maintenance hold a current mechanic certificate with both airframe and powerplant ratings.

In addition to the foregoing, to serve as director of maintenance for an operation conducted under part 121, a person must have 1 year of experience in a position of returning airplane to service, at least 5 years experience within the past 5 years in one or a combination of the following: maintaining airplanes in the same category and class as the certificate holder uses or repairing airplanes in a certificated airplane repair station that maintains airplanes in the same category and class as the certificate holder uses.

Also, the requirement in present § 135.39(c) that the required experience in maintaining large aircraft must include the recency requirements of § 65.83 has been added to proposed § 119.67(c) and carried over to proposed § 119.71(e).

• *Chief pilot.* Current § 135.39(b)(1) requires that a chief pilot who conducts any operation for which the PIC is required to hold an airline transport pilot certificate must "hold a current airline transport pilot certificate with appropriate ratings for at least one of the types of aircraft used." Similarly current paragraph (b)(2) requires that a chief pilot of a certificate holder who is not conducting any operation for which the PIC is required to hold an airline transport pilot certificate must "hold a current commercial pilot certificate with an instrument rating." Proposed § 119.71(c)(1) and (d)(1) omits the word "current" because these pilot certificates no longer have an expiration date and are revoked only for cause. The words "and be qualified to serve as PIC in at least one type of aircraft used in the certificate holder's operation" are added to clarify that the chief pilot must meet recency of experience requirements and medical requirements. Readers should note that, in order to be a chief pilot for an operator that conducts part 135 operations, that person must be qualified to serve as PIC in operations conducted under that part. The FAA feels that this proposed requirement is necessary for chief pilots under part 135, but not required for chief pilots under part 121 because part 121 requires operational control systems (e.g., dispatch system, flight following system) that are more robust than the operational control systems required

under part 135. In fact, part 135 does not require a dispatch system or a flight following system; as a minimum, it only requires a flight locating system.

To be eligible to be a chief pilot in part 121 operations, or part 135 operations in which any operation requires that the PIC hold an ATP certificate, a person must hold an ATP certificate. A commercial pilot certificate, with appropriate ratings, is sufficient for a chief pilot at a part 135 operation that only conducts operations for which the PIC's are required to hold a commercial pilot certificate.

In addition to holding the appropriate certificate, in order to be eligible to be a chief pilot in part 121 or 135 operations, a person must have at least 3 years experience as a PIC of aircraft operated under parts 121 or 135. However, if that person is becoming a chief pilot for the first time, the 3 years experience must have been obtained within the previous 6 years.

• *Chief inspector.* Section 121.61 requires a chief inspector for each supplemental or commercial operator conducting part 121 operations. This proposal would standardize this requirement for all operators under part 121. In addition to the existing eligibility requirements, the chief inspector would be required to have at least 1 year of experience in a supervisory position maintaining large aircraft. See 119.67(d).

• *Deviation authority.* The deviation authority contained in §§ 121.61(b)(2) and 135.39(d) has been combined and made applicable to all management personnel. Sections 119.67(e) and 119.71(f) authorize the Manager of the Flight Standards Division in the region of the certificate holding district office to authorize a certificate holder to employ a person who does not meet the qualifications in proposed §§ 119.67 or 119.71. For a certificate holder or applicant that wants to employ a person who does not hold the required airman certificate (e.g., ATP certificate, commercial pilot certificate, airframe and powerplant certificate), the deviation authority sections would not cover such a lack of airman certification situation. The deviation authority provides a means for competent and qualified personnel who do not meet the management personnel qualifications to be employed in required positions.

Revisions to Parts 121 and 135

As discussed earlier, SFAR 38 and SFAR 38–2 were intended as temporary measures that superseded certain provisions in the FAR. Thus, both special regulations began with the statement "Contrary provisions of parts 121, 123, 127, and 135 of the Federal Aviation Regulations notwithstanding* * *." This statement served to inform operators that requirements in the regulations that were contrary to the requirements in the SFAR were superseded by the SFAR. The purpose of the proposed revisions to part 121 Subparts A, B, C, and D, and part 135, Subpart A, is to delete all sections which have been moved to part 119 and to eliminate all references contradictory to part 119, such as requirements using outdated terminology. Subparts B, C, and D and certain sections of Subpart A of part 121 are entirely deleted as well as certain sections of Subpart A of part 135 because these requirements are either obsolete or have been moved to proposed part 119. The FAA anticipates that a derivation table, showing the origin and current source of many of the proposed new sections, will appear in a final rule document. Also, a description of some of these revisions occurs in the "Editorial Changes" and the section-by-section portions of this preamble.

Rescinding Part 127 and Related Rotorcraft Regulations

SFAR 38–2 required rotorcraft operations that were formerly conducted under part 121 or part 127 to be conducted under part 135. Part 127 and rotorcraft sections of part 121 have been in effect for 20 years without substantive change despite significant changes in equipment and technology during the period. The rotorcraft requirements under part 121 and all of part 127 would have needed complete revision and updating to be applicable to today's technology. In contrast, part 135 has been updated in recent years. Since most rotorcraft have less than a 30-passenger seating capacity and a payload capacity of less than 7,500 pounds, the FAA decided in the interests of efficiency and safety that rotorcraft operations should comply with the requirements of part 135. In accordance with SFAR 38–2, part 135 requirements superseded part 127 and §§ 121.13 and 121.157. In effect this notice formally proposes a rescission of part 127 and related part 121 sections which were suspended by SFAR 38–2.

The FAA stated in its preamble to the proposed SFAR 38–2 and reiterates in this proposal that, if the air transportation industry significantly expands the use of rotorcraft with more than 30 passenger seats or more than 7,500 pounds payload capacity, appropriate rules would be developed to clearly specify the operating requirements for this class of rotorcraft. However, in the interim, if an operator requests authority to operate this class of large rotorcraft where safety requirements in addition to those prescribed in part 135 are warranted, special operations specifications would be issued, appropriate to the aircraft size and kind of operation.

Editorial Changes

The proposed new part 119 and revisions to parts 121 and 135 would require certain editorial changes. These changes have been made for clarity and consistency and to facilitate combining the requirements of parts 121 and 135. None of these changes would impose any additional requirements on persons affected by the regulations.

The following are examples of changes that would be incorporated in proposed part 119 and made to all of the sections remaining in part 121, Subpart A, and part 135, Subpart A, as well as to other parts of the FAR in order to make them consistent with each other and to reflect current FAA administrative procedures:

(1) References to "domestic, flag, supplemental, or commuter air carriers" have been changed to "domestic, flag, supplemental, or commuter operation," as appropriate.

(2) References to "Domestic, Flag, or Supplemental Air Carrier Operating Certificates" have been changed to "Air Carrier Certificates."

(3) References to "ATCO Operating Certificates" have been changed to "Air Carrier Certificate" or "Operating Certificate."

(4) References to "Flight Standards District Office" and "District Office" have been changed to "certificate-holding district office," and a definition for "certificate-holding district office" has been added.

(5) Obsolete references and compliance dates have been deleted to reflect current FAA procedures and the current FAR.

(6) Language changes have been made for consistency and to facilitate computer searches for certain terms; for example, "principal operations base" is changed to "principal base of operations."

(7) An effort has been made to break unwieldy paragraphs into more manageable divisions.

In the final rule for this proposal, the FAA will make similar editorial changes in the remaining subparts of parts 121 and 135 and in any other parts affected.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal

agency shall propose or adopt a regulation only upon area benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this Notice of Proposed Rulemaking (NPRM) would generate benefits that justify its costs and is "a significant regulatory action" as defined in the Executive Order. The FAA estimates, however, that the NPRM would have a significant economic impact on a substantial number of small entities. No part of the proposed rule is expected to constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Costs

The total cost of compliance of the proposed rule is estimated to be $275 million (or $199 million, discounted at 7 percent), over the next 10 years, in 1994 dollars.

The FAA examined each section of part 121 to determine the potential costs of compliance for existing part 135 commuter operators with airplanes of 10 or more passenger seats. First, all of the sections in part 121 were divided into five areas: (1) Operations, (2) Cabin safety, (3) Certification, (4) Maintenance, and (5) Part 119. Next, multidisciplinary teams of FAA personnel evaluated each of the five areas to determine which sections would impose additional costs and which would not. The following represents the results of that evaluation.

A. *Sections without cost impacts.* Those part 121 sections that the FAA has determined would not impose additional costs on part 135 commuter operators are not described in this summary evaluation. Each of those part 121 sections would not impose costs for one of the following reasons: (1) Current practice is identical or very similar to the new requirement; (2) the new requirement represents minor procedural changes; (3) the section determines general applicability and does not specifically impose any costs; or (4) certain requirements of part 135 would be incorporated into part 121 without change. Those part 121 sections without costs are described in the full evaluation under each of the areas for which they apply. While not shown in this summary evaluation, it is important to note that 10 of the sections in the proposed rule were identified as having negligible costs. These negligible costs, even when combined, would not be significant.

B. *Sections with potential cost impacts.* The proposed rule would impose costs on part 135 operators with 10-to-30-seat airplanes. The FAA estimates the total cost of the proposed rule would be $275 million over the next 10 years, with a present value of $199 million. The potential costs are as follows:

Area	10–19 seats	20–30 seats	Total cost	Present value
Operations	$141.8	$58.5	$200.3	$141.2
Maintenance	0.1	0.0	0.1	0.1
Cabin Safety	11.7	8.8	20.5	15.2
Part 119	1.6	0.4	2.0	1.7
Certification	51.4	0.7	52.1	41.0
Total	206.6	68.4	275.0	199.2

Based on the $207 million figure shown above, the FAA estimates that, on average over the next 10 years, the price of a one-way airline ticket would increase by 1.7 percent or by $1.91 (from $110 to $112) for affected operators with 10-to-19-seat airplanes. Similarly, based on the $68 million figure, the ticket price would increase by 0.6 percent or by $0.68 (from $110 to $111) for affected operators with 20-to-30-seat airplanes.

In addition to the information shown in the table above, it is important to note that the undiscounted cost per airplane in each of the first four years of the proposed rule, by seat category, sheds light on the initial compliance costs incurred by the impacted operators. Costs are highest during the first year (1996) and drop each year thereafter. In 1996, affected operators with 10-to-19-seat and 20-to-30-seat airplanes would incur per airplane costs of $50,000 and $26,000, respectively. Similarly, in 1997, there would be costs of $23,000 and $16,000, respectively. In 1998, there would be costs of $23,000 and $15,000, respectively. And in 1999, there would be costs of $24,000 and $14,000, respectively.

1. Operations. *Section 121.135—Contents of manual.* This section would require the affected operators to have more extensive operations manuals than are currently required under part 135. Part 121 requires more detailed instructions to flight and ground personnel, including dispatch procedures, airport information, and approach procedures. The manuals of part 121 operators are, on average, about three times as voluminous as those of part 135 operators. Thus, compliance with this effort would result in major rewriting of manuals. Based on cost information received from industry, the FAA estimates that, on average, each commuter operator that would come into part 121 would spend about $50,000 for new manuals. This cost estimate multiplied times the number of operators expected to be in existence over the next 10 years amounts to an estimated $3.9 million ($3.5 million, discounted).

Section 121.337—Protective breathing equipment (PBE) for the Cockpit. This section requires PBE units for cockpit crewmembers operating transport category airplanes. Part 135 has no such requirement. This evaluation assumes that three PBE units (one for each pilot station and another for fighting fires) would be installed in existing and future impacted airplanes with 10 to 19 seats. There is very little information available related to the number of PBE units on these types of airplanes. As a result of this uncertainty, the FAA solicits comments from the public and the aviation community on the number of part 135 airplanes, with 10 to 19 passenger seats, that are equipped with PBEs in the cockpit and whether the units are fixed or portable. Based on information received from FAA technical personnel, affected airplanes with 20–30 passenger seats already have fixed PBE at each of the two pilot stations in the cockpit. Therefore, only one additional portable PBE would be needed for fighting fires in the cockpit of such airplanes.

Since portable PBEs are much cheaper (and more practical in many situations) than fixed PBEs, commuters are

assumed to acquire and install portable PBEs in the cockpit, especially those impacted airplanes with 10 to 19 passenger seats. In addition to PBE, this evaluation includes costs for weight penalty (5 pounds per unit) and PBE training for new pilots. The estimated cost of each PBE unit ($400), combined with the other cost components, multiplied times the number of airplanes in existence over the next 10 years results in $4.3 million ($3.7 million, discounted).

Section 121.357—Airborne weather radar. This section would require the affected operators to equip their airplanes with approved weather radar. Currently, § 135.173 requires that operators equip their airplanes with either thunderstorm detection equipment or approved weather radar. However, section 135.175 requires operators with 20–30 passenger seats to equip their airplanes with weather radar. Based on information received from industry, an estimated 90 percent of all commuter airplanes with 10 to 19 passenger seats are assumed to already have approved weather radar equipment. Therefore, the FAA assumes that this section would only impact an estimated 10 percent of those operators with 10-to-19-seat airplanes in 1996 and subsequent years.

This evaluation assumes an average cost of $30,000 per radar unit and a weight penalty of about 25 pounds per airplane. The sum of these cost components multiplied times the number of commuter airplanes expected to be in existence over the next 10 years amounts to an estimated cost of $3 million ($2.7 million, discounted).

Section 121.471—Flight time limitations and rest requirements (All flight crewmembers). This section would require affected operators to comply with part 121 flight time limitations and rest requirements for all flight crew members. Under this proposal, current flight time limitations and rest requirements for commuters would change as follows: from 1,200 to 1000 hours per calendar year, from 120 to 100 hours per calendar month, and from 34 to 30 hours in any seven consecutive days. Although this section pertains mainly to pilots, operators are assumed to apply the same procedures for the respective number of flight attendants. Under a recently published rule on flight and duty time for flight attendants, the FAA gave operators an option to adjust the rest and duty requirements of flight attendants based on those for pilots. This evaluation also assumes that they would adopt that option since it is cheaper to do so for some current part 121 operators.

According to industry representatives, most affected operators are already using rest and duty flight limitations that would be required by this section. On average, pilots of affected operators fly fewer evaluation assumes that 75 percent of affected operators already meet this requirement and that the other operators would have to increase their flight crews by 20 percent. The FAA estimates that an average of 559 additional pilots and flight attendants would be hired and retained between 1996 and 2005. This evaluation also estimates a weighted average annual salary for these entry level new hires to be $19,200 (including fringe benefits). Based on these cost components, the potential cost of compliance would be an estimated $107 million ($75 million, discounted).

Sections 121.593–595: Dispatching authority for domestic and flag air carriers; 121.107: Dispatch centers; 121.533–535: Responsibility for operational control; 121.683: Crewmember and dispatcher record; 121.687: Dispatch release; and other sections that assign specific duties to dispatchers. These sections would require dispatchers and dispatch centers to authorize flights for affected operators with 10 to 30 passenger seats. Dispatchers are not required under part 135. The evaluation assumes that operators currently certificated only under part 135 do not employ fully qualified dispatchers; it further assumes that operators certificated under both parts 121 and 135 employ about one half as many qualified dispatchers as they would need to dispatch all of their flights. According to the Airline Dispatcher Federation, virtually all part 135 operators already have facilities and communications equipment that satisfy the dispatch requirements under part 121. Accordingly, the FAA has not included estimates of additional costs attributable to facilities and equipment. The FAA estimates that the dispatcher requirement would cost an estimated $83 million ($57 million, discounted) over the next 10 years. Operators of 10-to-19-seat airplanes would bear approximately $58 million of the costs ($40 million, discounted).

2. Cabin Safety. *Sections 121.133, 121.135, and 121.137—Flight attendant manual.* These sections would require all flight attendants to have an operations manual. There is no such requirement for flight attendants working for part 135 operators. This requirement would necessitate preparing such manuals for each 20–30 seat airplane (airplanes with 10 to 19 passenger seats are assumed not to have flight attendants). The costs would involve the preparation of the manual contents by a flight attendant supervisor and a paperwork and layout specialist and the copying and binding of the finished manual. FAA analysis projects 352 airplanes operated by 21 air carriers in 1996 and 580 airplanes operated by 36 air carriers in 2005. Each airplane has one flight attendant, so the number of manuals is estimated to equal the projected number of airplanes. The 10-year cost for the preparation, copying, and binding of these manuals would be $394,100 ($330,900, discounted).

Sections 121.285 and 121.589—Carry-On baggage. These sections would require those part 135 commuter operators coming into part 121 to develop a program to visually screen and stow carry-on baggage. Part 121 requires that a crewmember verify that all baggage is properly secured before all doors are closed and the airplane leaves the gate. The cost of this requirement would involve the preparation of an addendum to the Operations Specifications in which each carrier would outline procedures for screening baggage. Each carrier would bear the cost of developing the addendum for the airplanes in their fleet. The number of air carriers is projected to rise from 69 in 1996 to 77 in 2005. For each air carrier, developing the addendum would involve two people, a flight attendant supervisor for 20–30 seat airplanes and a crewmember supervisor for 10-to-19-seat airplanes (both paid at $24.00/hr) and a clerical person to do the paperwork (an average of 8 hours each). The 10-year cost for operators of 10-to-30-seat airplanes is estimated to be $161,100 ($147,900, discounted).

Section 121.291—Ditching demonstration. This section would require air carriers to conduct a ditching evacuation demonstration for new airplanes prior to normal operations. The one-time demonstration only applies when an operator introduces a new airplane make and model currently not in its fleet. This requirement would not apply to the current fleet. Because there are no data available on the extent to which operators would acquire new makes and models in the future, the FAA has made some assumptions. The analysis assumes that only 25 percent of all 10-to-30-seat airplanes conduct extended overwater flights. Hence, the evaluation probably overstates the number of ditching demonstrations needed. As a result of this uncertainty, the FAA solicits comments from the aviation community on the number of new airplane makes and models that air carriers plan to acquire between 1996 and 2005.

The evaluation assumes that over 10 years, 89 tests would be conducted, at an average cost of $400 per test. The cost elements of the demonstration include crewmember compensation (based on 5 hours) and repacking the life rafts (8 hours of labor by maintenance personnel). Air carriers only compensate crewmembers for emergency training at 3.5 hours paid out of 8 hours of training, as it is not considered flight time. The wage rates for the training hours were multiplied times 0.4375. Based on crew compositions, two pilots would need to be compensated for 10-to-19-seat airplanes, and two pilots and a flight attendant would need to be compensated for 20-to-30-seat airplanes. The FAA estimates that the 10-year cost for part 135 operators to conduct ditching evacuation demonstrations for new 10-to-30-seat airplanes would be $35,600 ($25,300, discounted).

Section 121.309—Medical kits. This section would require one medical kit per airplane for affected operators moving into part 121. The costs of providing medical kits include acquisition ($200 each) with a 25 percent spares ratio, replacement (5 percent per year), maintenance ($20 per year), a weight penalty (7 pounds per unit), physician consultation expenses ($500 per consultation twice a year per air carrier to obtain certain contents, such as prescription drugs, for the medical kits), and record keeping (1 hour per instance a kit is used). Acquisition, replacement, and maintenance costs are a function of the number of airplanes, while physician costs are incurred by individual operators. The FAA estimates that the 10-year cost for providing medical kits on the 20–30 seat airplanes now operating under part 135 would be $783,900 ($552,800, discounted).

Section 121.309—First aid kit. This section would require airplanes to have at least one first aid kit. Currently, part 135 requires all airplanes with greater than 19 seats to have one kit. This section would require a first aid kit on all 10-to-19-seat airplanes. The costs are composed of acquisition ($70 per kit) with a 25 percent spares ratio, a 5 percent replacement rate, and annual maintenance ($7 per kit). Costs are a function of the 10-to-19-seat airplane count, which is projected to be 822 in 1996 and 730 in 2005. The 10-year cost of this requirement would be $157,400 ($126,100, discounted).

Section 121.309—Halon fire extinguishers or equivalent. This section would require all affected airplanes to replace existing fire extinguishers (two per 10-to-30-seat airplane—one in the cabin and one in the cockpit) with halon fire extinguishers or the equivalent. This evaluation assumes that no part 135 airplanes are currently equipped with halon fire extinguishers. It also assumes that, since part 135 airplanes were already equipped with fire extinguishers, there would be no additional maintenance costs or weight penalties for this equipment. Based on an industry survey, a 5-pound halon fire extinguisher costs about $100. The cost of this section would involve purchasing the requisite number of halon fire extinguishers per airplane in 1996 with a 10 percent spares ratio. With a five percent recharge rate per year after 1996, the FAA has estimated that the 10-year cost of this requirement is $413,200 ($348,300, discounted). The highest annual cost occurs in 1996 when the 10-to-30-seat airplanes are initially equipped.

Section 121.313—Cockpit key. This section would require all crewmembers to have access to a key for the cockpit door. This requirement would apply only to 20-to-30-seat airplanes because airplanes with 10 to 19 seats are not required to have locking cockpit doors. The cost of this requirement would involve copying one key for each airplane. Due to the low cost of copying a key (about $1 per key), the FAA estimates the cost of compliance for this requirement to be $600 ($500, discounted). The highest annual cost ($300 discounted) would occur in 1996 when all 20-to-30-seat airplanes in the fleet would have their keys made. Cost estimates for subsequent years are based on the projected annual increase in airplanes.

Section 121.333—Portable oxygen. This section would require airplanes that are certificated to fly above 25,000 feet to have a portable oxygen unit for each flight attendant. This requirement would apply only to commuter airplanes having more than 19 seats because no 10-to-19-seat airplanes in commuter operations are certificated to fly above 25,000 feet, and none of them have flight attendants. In 1994, 78.2 percent of 20-to-30-seat airplanes were certificated to fly above 25,000 feet, and this evaluation projects this percentage into the future. This cost estimate takes into account oxygen unit acquisition ($400 per unit) with a 25 percent spares ratio, a 5 percent replacement rate per year, annual maintenance ($40 per unit), and a weight penalty (5.5 pounds per unit; assuming one unit per airplane, with spares kept on the ground). The evaluation assumes that 344 oxygen units would be purchased in 1996 and new airplanes would be outfitted in the future. Future year costs are based on the projected annual increase in airplanes. The 10-year cost to equip all 20-to-30-seat airplanes would be $520,200 ($385,500, discounted).

Sections 121.333, 121.571, 121.573—Passenger information. These sections establish standards for passenger card information under part 121. Although the passenger card information requirements for part 135 operators are similar, new cards would have to be prepared for 20-to-30-seat airplanes; 10-to-19-seat airplanes already exceed the part 121 standards. Industry experience has shown that each card has a lifetime of approximately 3 years. Assuming a phase-in period of one year, one-third of the cards would normally have been replaced during that period anyway. Hence, the two-thirds of the cards normally not scheduled for replacement would need to be replaced. The new information would also need to be included in any flight attendant manual and in the oral briefing. Preparation costs would involve two people, a flight attendant supervisor and a paperwork layout specialist. This effort would require an average of 2 hours each to prepare the new information card. The FAA assumes that it would cost $1 to print and distribute each information card. The 10-year cost for the preparation of these cards would be $130,100 ($94,200, discounted).

Section 121.337—Protective breathing equipment (PBE) for the cabin. This section would require a PBE unit in the passenger section of the airplane cabin. The evaluation examines the costs of placing one PBE on all 20-to-30-seat airplanes currently operating under part 135. PBE units would be required in the cabin area of 10-to-30-seat airplanes; however, the PBE in the 10-to-19-seat airplanes would be used by crew members, and their costs are reflected in the Operations section of this analysis. Costs include acquisition of a portable PBE unit ($400 per unit) with a 25 percent spares ratio, annual maintenance ($40 per unit), a 5 percent replacement rate per year, and a weight penalty (5 pounds per unit). After initial PBE acquisition in 1996, new PBE acquisition costs are the sum of the projected increase in airplanes and the replacement quota. Ten-year costs to supply all 20-to-30-seat airplanes are estimated at $659,100 ($488,900, discounted).

Section 121.339—Life rafts. This section would require all airplanes involved in extended overwater flight to have an additional life raft on board. The FAA assumes that only 25 percent of all 10-to-30-seat airplanes conduct extended over water flights. Costs include raft acquisition ($5,000 per raft),

annual maintenance ($500 per year), a 5 percent replacement rate per year, and a weight penalty (85 pounds per raft). The 10-year cost to equip the affected part 135 airplanes with an additional life raft would be $4.4 million ($3.4 million, discounted).

This section would require operators to provide a flotation cushion or life vest for each passenger seat on all airplanes. The FAA assumes that operators of 10-to-19-seat airplanes would not be able to install flotation cushions and would therefore obtain life vests. The FAA also assumes that operators of 20-to-30-seat airplanes would replace existing seat cushions with flotation cushions. Current 10-to-19-seat airplanes average 18.62 seats per airplane and 20-to-30-seat airplanes average 29.9 seats per airplane. This evaluation assumes that these ratios remain constant into the future. The total number of cushions and life vests per year is derived by multiplying the number of seats per airplane times the projected airplane count for the 10–19 seat and 20-to-30-seat airplane categories. The cost of providing flotation cushions and life vests includes acquisition ($50 each) with a 25 percent spares ratio, annual maintenance ($5 each), a 5 percent replacement rate per year, and a weight penalty (2 pounds for the life vests on the 10-to-19-seat airplanes and no weight penalty for the 20-to-30-seat airplanes because the existing seat cushions weigh the same as the flotation cushions). Future year costs are based on the projected annual increase in 10-to-30-seat airplanes. The 10-year cost for providing flotation cushions or life vests on 10-to-30-seat airplanes would be $5.1 million ($3.9 million, discounted).

Section 121.391—Flight attendant at the gate. This section would require affected operators to have a flight attendant or other authorized person on the airplane during intermediate stops while passengers are on board. The FAA assumes that these airplanes have and would continue to have the same number of daily intermediate stops (3 per day) as part 121 airplanes. Flight attendant coverage would be provided by personnel who are already compensated, except during airplane delays (3 percent of flights) when those persons are no longer available.

The FAA has determined that individual operators could comply with this requirement by following one of three scenarios. Under the first scenario, operators would require all passengers to deplane during intermediate stops at the gate. There may be a cost in inconvenience to passengers who have to deplane, which in turn may ultimatley reduce the amount that they are willing to pay to fly these routes. The FAA has not attempted to quantify this cost due to the lack of information. Interested persons with quantifiable data on the cost of this inconvenience are invited to submit information to the docket. Under the second scenario, operators would require either a flight attendant or pilot to remain on the airplane. Under the third scenario, operators would allow a trained, authorized person to stand in for the flight attendant or pilot when coverage is needed due to a flight delay. The FAA expects air carriers to choose each of the first two options 40 percent of the time and the third option 20 percent of the time due to the higher costs, which include initial training costs and the costs of keeping such personnel on stand-by at intermediate stops. The air carriers would incur the cost of wage compensation when personnel who are not already compensated stay on board airplanes during delays. The 10-year cost of requiring flight attendants (or other designated personnel) at the gate on 10-to-30-seat airplanes is estimated at $7.5 million ($5.2 million, discounted).

Section 121.417—Protective breathing equipment training. This section would require part 135 flight attendants to be trained in PBE usage by fighting an actual fire. Specifically, this proposed rule change would require all current and future flight attendants on 20-to-30-seat airplanes to receive one-time PBE training fighting an actual fire during the first year (1996). The FAA estimates training costs (including wages, transportation, and equipment) to be $135.50 for each flight attendant per session. Total instruction costs, which include $125 per session per instructor, were calculated by assuming 20 flight attendants per class (900 flight attendants in 1996). Maintenance labor ($28 per session) is needed to clean up after training. The 10-year cost for part 135 flight attendants to receive PBE training would be $323,500 ($250,500, discounted).

3. Certification. *Section 121.161(a)—Airplane limitations: Type of route.* This section would require that an adequate airport be within one hour flying time at single engine cruising speed along all points of the designated flight route. There is no similar requirement in part 135. This requirement would not affect current part 135 operators in the 48 states, but it could affect 6 of the 12 part 135 operators in Alaska. The FAA estimates that about 150 flights would be affected annually, with reroutings adding about one-half hour to each flight. Applying an hourly variable operating cost of $500, the FAA estimates that annual operating costs would increase by about $37,500. Over the 10-year period, this section would cost an estimated $375,000 ($263,000, discounted).

Sections 121.177—Takeoff limitations. Section 121.177(a)(1) would require that an airplane be able to stop safely on the runway, as shown by the accelerate stop distance data, at any time during takeoff until reaching critical-engine failure speed. While this requirement would have minimal effect on operators, manufacturers would be required to calculate accelerate-stop distances for recertification. The FAA estimates that recertification would cost about $5,000 per airplane type for each of the 13 existing commuter category type certificated airplanes, for a first year cost of about $65,000. There would be no ascribable costs for future type certificate airplanes because accelerate-stop distances would be demonstrated during the normal certification process. Over the 10-year period, this section would cost an estimated $65,000 ($61,000, discounted).

Section 121.305—Flight and navigational equipment. Section 121.305(j) would require a third attitude indicator. This device is not required on part 23 certificated airplanes, although at least one model (Beech 1900–D) has it as standard equipment. The FAA proposes a one-year retrofit period. The FAA estimates that it would cost about $50,000 for a manufacturer to design, test, and document the results for FAA acceptance. The FAA also estimates that it would cost $16,000 per airplane to retrofit this device, which would add about 5 pounds of weight. For newly manufactured airplanes, installation would cost about $8,000. The annual maintenance, inspection, and repair costs would be about 10 percent of the installation costs on a new airplane. After adjusting for the number of existing commuter category airplanes that have this equipment, the FAA estimates that first-year retrofitting would cost about $12.8 million. The annual weight penalty would be between $9,000 and $10,000. The annual compliance cost for newly manufactured airplanes would be between $160,000 and $200,000. The annual maintenance cost would be between $450,000 and $600,000. Total costs over 10 years would amount to about $19.2 million ($18.4 million, discounted).

Section 121.308—Lavatory fire protection. Section 121.308(a) would require each lavatory to have a smoke detector system connected to a warning light in the flight deck and to a warning

light or aural warning that can be detected by a flight attendant in the passenger cabin. Section 121.308(b) would require each lavatory to have a built-in automatic fire extinguisher in each disposal receptacle. These requirements are also contained in section 25.854 for airplanes type certificated after 1991. There are no such requirements in part 135 or part 23. The FAA proposes to apply these requirements to airplanes with 20 or more seats currently operating under part 135. The cabin warning signal would not be applied to airplanes with 19 or fewer seats because they have no flight attendant.

The FAA estimates that about half of the 272 airplanes used in part 135 operations and certificated before 1991 as part 25 airplanes do not have these fire warning and fire extinguishing devices. However, nearly all recently manufactured airplanes do have them. Consequently, the FAA assumes that all newly manufactured airplanes would have these devices even in the absence of a regulatory requirement. Thus, there would be no incremental compliance cost for newly manufactured airplanes.

The FAA estimates that it would cost about $175 to retrofit a warning signal that would add about 5 pounds of weight and involve about $50 a year in maintenance and about $15 a year for replacement. The FAA estimates that it would cost about $300 to retrofit receptacle automatic fire extinguishers that would add about 5 pounds of weight, cost about $50 per year in maintenance, and cost about $25 per year for replacement. Based on these assumptions, the retrofitting costs would be about $23,800 for fire detectors and about $40,800 for receptacle fire extinguishers. The annual weight penalty for both devices would be about $4,000. The annual maintenance and replacement costs would be about $20,000. The total costs over 10 years would be about $263,000 ($206,000, discounted).

Sections 121.310 (b), (c), (d), (e), and (h)—Cabin emergency lighting equipment. These sections are analyzed together because they comprise an integrated system. Section 121.310(b) requires interior emergency exit markings (1) above the aisle near each emergency exit or at another ceiling location if the aisle height is too low and (2) next to each emergency exit. Section 121.310(c) requires an emergency lighting system that is independent of the main lighting system's power supply and that illuminates each exit sign and the floor proximity emergency escape path marking Section 121.310(d) requires that these emergency lights (1) be automatically activated in a crash landing or whenever the airplane's normal electric power is interrupted and (2) have the capability to be manually operated from the flight deck and from a point in the cabin readily accessible to the flight attendant's seat. Section 121.310(e) requires luminescent emergency exit operating handles for airplanes certificated after May 1, 1972, and allows painted emergency exit operating handles in airplanes certificated prior to that date. Section 121.310(h) requires airplanes to have the independently powered exterior emergency exit lighting specified in section 25.812 (f) and (g) to illuminate both the area where the first step out of the exit would be taken as well as the area (for an overwing exit) where the first step off the wing would be taken.

There are no parallel requirements in part 135, although an airplane type certificated under part 23 must have a self-illuminating exit or an independently electrically illuminated sign under section 23.811(b). Commuter category airplanes do not have these signs, markings, the associated independent electrical system, and exterior lighting. The FAA proposes a 2-year retrofit period. The emergency lighting would meet the requirements of section 121.310(e) for an illuminating emergency exit handle.

The FAA estimates that this total retrofit electrical package would cost about $2,500 for a commuter category airplane and would add about 20 pounds of weight. The FAA also assumes that the annual maintenance and replacement costs would be about 10 percent of the retrofitting cost. For newly manufactured airplanes, the installation cost would be about $2,000. On this basis, the retrofitting cost would be about $1 million per year for the first 2 years. The weight penalty cost would be about $22,500 in the first year and about $45,000 in each year thereafter. The annual maintenance cost would be between $200,000 and $250,000. Since newly manufactured airplanes would largely replace existing airplanes, these weight penalty, maintenance, and replacement costs are included in the retrofitting costs above. The total costs over 10 years would be about $3.6 million ($2.5 million, discounted).

Section 121.310(g)—Exterior exit marking. Section 121.310(g) would require each emergency exit and the means of opening that exit from the outside to be marked (painted) on the outside of the airplane. The exit must be marked by a 2 inch colored band. There are no similar requirements in part 135 but airplanes certificated under part 23 must have a marking that is readily identifiable under § 23.811(a). The FAA estimates that about 90 percent of airplanes in part 135 operation have markings that would comply with section 121.310(g). For the remaining 10 percent that would need marking changes, this requirement would cost about $100 per airplane. On this basis, the FAA estimates that one-time repainting costs would be about $8,000 ($7,400, discounted) in 1996.

Section 121.311(g)—Shoulder Harnesses. This section requires flight attendant seats to have shoulder harnesses. There is no similar requirement in part 135. This requirement would only affect airplanes with 20–30 seats because airplanes with fewer seats do not have flight attendants. The FAA proposes to require that harnesses be installed within one year. The FAA believes that a retrofit and an installation on a new airplane would cost about the same—about $300 for the harness and about four hours for the installation (at about $20 per hour). The harnesses would have a 20-year life span and would involve about $15 in annual maintenance and inspection. On that basis, the first year compliance cost would be about $135,000, and the annual compliance cost for new airplanes would be between $15,000 and $19,000. The total costs over 10 years would be about $284,000 ($228,000, discounted).

Section 121.312(b)—Passenger Seat Cushion Fire Blocking Materials. This section would require that passenger seat cushions comply with the fire protection standards in section 25.853(b). This section would require that existing seat cushions in commuter category airplanes be replaced by fire resistant cushions. The proposed rule would provide a 2-year retrofit period plus 2 additional years if there are demonstrated difficulties in installing fire resistant seat cushions.

Although different compliance costs could be incurred by different commuter airplane models because the seat construction differs among these models, the FAA estimates that retrofitting a fire blocking seat cushion would cost approximately $20,000 per airplane and would add a total of 38 pounds (2 pounds per seat) of weight. Assuming that an equal number of airplanes would be retrofitted every year for the next 4 years, the FAA estimates that retrofitting seats would cost about $3.8 million in the first year and about $3.4 million in each of the next 3 years. The weight penalty would be about $20,000 in the first year and increase by $20,000 each year for 3 years until reaching an annual total of $80,000.

There would be no incremental inspection, maintenance, or repair costs because, in general, seat cushions are reupholstered rather than replaced, and the reupholstering cost would be independent of the underlying structure of the seat cushion.

For newly manufactured airplanes, there would be no incremental installation costs because it would take the manufacturer the same amount of time to install a seat with a fire blocked cushion as it would to install a seat with a non-fire blocked cushion. Thus, the only incremental cost for fire blocking seat cushions in newly manufactured airplanes would be the cost difference between fire blocked seats and non-fire blocked seats. The FAA estimates that this differential would be about $5,000 per airplane and add about 2 pounds of weight per seat. Therefore, the annual cost for newly manufactured airplanes would be about $150,000. Since these newly manufactured airplanes would largely replace existing airplanes, the weight penalty cost is included in the retrofitting cost estimates. Over the 10-year period, this cost would be about $15.5 million ($12.8 million, discounted).

The FAA, however, believes that these unit costs for both retrofitted and new installations would likely decrease over time, as fire blocked seats become the industry norm rather than an infrequently selected option. As they become more widely used, the large initial engineering, development, and testing costs would be amortized over more seats, and the per seat production costs would similarly decline as the number manufactured increases. Nevertheless, in order not to underestimate the compliance costs, the FAA has not incorporated any prediction concerning potential reductions in future fire blocked seat costs. The FAA requests information and comments on this assumption.

Section 121.314—Cargo and Baggage Compartments. Sections 121.314, 25.855, 25.857, 25.858, and part 25 appendix F part III would require fire retardant fiberglass cargo liners, smoke detectors that signal the flight deck, and fire extinguishing systems in Class C and D cargo baggage compartments. There are similar requirements for commuter category airplanes in section 23.853(d)(3). This section would require new production commuter category airplane cargo compartments to meet these part 121 and part 25 requirements within 4 years. Over the 10-year period, the estimated cost of compliance for these three requirements would be $5.5 million ($3.4 million, discounted).

Section 121.314 was amended in 1989 to require fire retardant fiberglass cargo liners in newly manufactured part 25 airplanes, but the requirement to retrofit airplanes in part 121 operation was limited to airplanes with cargo areas greater than 200 cubic feet. The FAA estimates that the initial engineering, development, and testing costs would be about $10,000 per type certificate. Although there would be no incremental labor costs for liner installations in newly manufactured airplanes, the FAA estimates that the incremental materials would cost about $10,000 and would add about 5 pounds of weight. The FAA assumes that there would be no incremental inspection, maintenance, or repair costs. Based on these assumptions, the FAA estimates that the annual incremental cost for newly manufactured airplanes, beginning after 4 years, would be between $300,000 and $350,000. The annual weight penalty would be about $4,000 in the first year, increasing by $4,000 each year thereafter until the commuter category airplane fleet is composed solely of complying airplanes.

With respect to fire detection systems, the FAA estimates that the initial engineering, development, and testing costs would be about $20,000 per type certificate. The FAA also estimates that it would cost about $4,500 per newly manufactured airplane to install this system and that it would add about 5 pounds of weight. The FAA assumes that inspection, maintenance, and repair costs would be about 10 percent of the installation cost. The annual incremental cost for newly manufactured airplanes, beginning after 4 years, would be about $130,000. The weight penalty would be about $4,000 in the first year and increase by $4,000 each year thereafter until the commuter category airplane fleet is composed solely of complying airplanes. Similarly, inspection, maintenance, and repair costs would be about $13,500 in the first year and would increase by $13,500 each year thereafter.

With respect to automatic fire extinguishing systems, the FAA estimates that the initial engineering, development, and testing costs would be about $30,000 per type certificate. The FAA also estimates that it would cost about $9,000 per newly manufactured airplane to incorporate this system and that it would add about 10 pounds of weight. The FAA assumes that inspection, maintenance, and repair costs would be 10 percent of the installation cost. The annual incremental cost for newly manufactured airplanes would be about $430,000. The weight penalty cost would be about $8,000 in the first year and would increase by $8,000 each year thereafter until the commuter category airplane fleet is composed solely of complying airplanes. Similarly, maintenance and repair costs would be about $27,000 in the first year and would increase by $27,000 each year thereafter.

Section 121.342—Pitot Heat Indication System. This section would require a pitot heat indication system to indicate to the flight crew whether or not the pitot heating system is operating. Part 23.1323 requires that a pitot heat system for most commuter category airplanes but there are no requirements for a heat indication system. The FAA proposes to require that existing commuter category airplanes have these heat indicating systems within four years. The FAA estimates that it would cost a manufacturer about $10,000 for initial engineering design, testing, and FAA approval. The FAA also estimates that it would cost about $500 to retrofit each airplane. There would be minimal weight penalty, inspection, maintenance, and repair costs. Over the 10-year period, this cost would be $1.2 million ($1 million, discounted).

Section 25.703—Takeoff Warning System. This section requires an aural warning at the beginning of the takeoff roll when the wing flaps, leading edge devices, wing spoilers, speed brakes, and longitudinal trim devices are not in a position that would allow a safe takeoff. There is no similar requirement in part 23. However, commuter category airplanes do not have leading edge devices, wing spoilers, or speed brakes. Further, these airplanes have demonstrated the ability to safely continue takeoff under abused trim conditions. As a result, the only additional monitoring would be for the flap settings.

Currently, there is rulemaking on the installation of digital flight data recorders (DFDR) in future airplanes. As DFDRs would monitor flap settings if they are required in future production airplanes, the FAA estimates that the average cost to engineer, develop, test, and install an aural warning would be about $1,000 per airplane. If, however, the DFDRs are not required, the FAA estimates that the average cost to engineer, develop, test, and install an aural takeoff warning device would be about $16,000 per airplane. The annual inspection, maintenance, and repair costs would amount to about 10 percent of the installation costs. The FAA proposes to require these aural warning devices on new production commuter

category airplanes produced four years or more after the final rule effective date. On that basis, if DFDRs are required equipment, the FAA estimates that the annual incremental cost for newly manufactured airplanes, beginning after 4 years, would be between $30,000 and $35,000, with total costs over the 10-year period of about $200,000 ($120,000, discounted). The annual maintenance cost would be between $3,000 and $4,000, increasing by about $3,500 every year thereafter, and totaling $80,500 over 10 years ($45,000, discounted). If DFDRs are not required equipment, then the annual incremental cost for newly-manufactured airplanes, beginning after 4 years, would be between $480,000 and $560,000, with total costs over 10 years of about $3.0 million ($1.8 million, discounted). The annual maintenance cost would be between $48,000 and $56,000, with total costs over 10 years of about $1.1 million ($650,000, discounted). The total compliance costs over 10 years would equal about $4.1 million ($2.5 million, discounted).

Section 25.807(e)—Ditching Emergency Exits. This section would require exits that are usable while the airplane is afloat, even if the airplane is not certificated for ditching. Amendment 23–46 to part 23 contains a similar requirement but all current commuter category airplanes were type-certificated before this amendment became effective. However, the overwing exits on nearly all commuter category airplanes already qualify as ditching exits. The provision would require the manufacturer to demonstrate to the FAA that the overwing exits can qualify. The proposed rule would allow manufacturers two years to provide this demonstration. The FAA estimates that such a process would cost about $5,000 for each of the 13 commuter category type certificated airplane models. On this basis, the compliance cost over the first 2 years would be about $65,000 ($59,000, discounted).

4. Maintenance. The FAA estimates that the cost of compliance for maintenance would amount to $105,000 over the next 10 years. Affected operators would incur costs to revise and upgrade their continuous airworthiness maintenance programs (CAMP). This and other cost considerations are discussed below.

Section 121.361—Applicability. The proposed rule would require affected operators with airplanes of 10 or more passenger seats to have a part 121 maintenance program. The proposed rule would require all part 135 commuters currently operating under a CAMP to revise and upgrade their program. Since these operators already have a CAMP, the only requirement of the proposed rule would to revise and upgrade their existing program. The FAA estimates the potential cost of this section is $105,000 ($98,000, discounted).

Other cost considerations. In addition to those maintenance cost estimates for equipment contained in the cabin safety, operations, and certification areas of this evaluation, the proposed rule may impose additional costs for training maintenance personnel. Compliance with the more complexed equipment requirements of the proposed rule may necessitate additional training of maintenance personnel. Despite surveying several small operators to obtain information on the costs of such training, the FAA needs more data to estimate such costs. The FAA believes that some commuters may incur higher training costs as the result of the proposed rule, though to what extent is uncertain. As the result of this uncertainty, the FAA solicits comments from the aviation community as to what extent the affected commuters would incur additional costs for training maintenance personnel.

5. Part 119. Part 119 is a proposed new part that consolidates the certification and operations specifications requirements for persons who operate under parts 121 and 135. Most of these regulations are currently in SFAR 38–2; therefore, moving them to part 119 would not impose any additional cost. However, some sections currently under parts 121 and 135 would be moved to part 119. The costs imposed by those sections on the affected part 135 operators are presented below. Over 10 years, the costs of these provisions are estimated to be $2.2 million ($1.8 million, discounted).

Sections 119.33(c), 121.163—Proving tests. When an operator changes the type of operation it conducts or purchases an airplane that is new to that operator, that operator must go through a proving test. A proving test consists of a non-passenger flight in which the operator proves it is capable of safely conducting that type of operation or airplane. Going from a part 135 operation to part 121 operation would be a change in operation and be subject to a proving test. Under the proposed rule, there would be two costs associated with proving tests—initial and recurring. The initial cost would be proving tests for the existing fleet (existing as of 1996). The recurring costs would be for any future operational or airplane changes that would normally require a proving test as required by the existing rule.

The current regulation prescribes 50 hours of flight for a part 121 (section 121.163(b)(1)) proving test. This is the number that part 135 operators switching to part 121 would be subject to. However, the current rule also allows for deviations from the 50-hour requirement. A sample of FAA records on proving tests shows that, since 1991, there has been a wide range of hours actually flown for proving tests. This is because the amount that the operator is allowed to deviate from the prescribed number of hours is based on what that operator requests and on what the FAA will allow. However, based on the above sample, the FAA assumes for the purposes of this analysis, the average deviation would be 50 percent, or 25 hours.

The FAA estimates that 25 hours of proving flights would cost the operator approximately $13,400 for a 20-to-30-seat airplane and $12,900 for a 10-to-19-seat airplane. The difference in cost is due to the flight attendant being on board in the 20-to-30-seat airplanes. These costs are based on the following assumptions:

Airplane Operation Cost

Hours of test flight time, 25
Airplane operating cost/hr., $370
Pilot salary per hr., $47
Flight attendant per hr., $20

Management Costs

Manager salary per hr., $23
Secretary salary per hr., $10
Maintenance salary per hr., $21
Days of preparing for test, 3

If there is a proving test for each type of airplane for each part 135 carrier affected by the proposed rule, then there would be approximately 98 proving tests to bring the current fleet up to part 121 standards. The cost to the 69 part 135 operators in 1996 for the initial 98 proving tests would be approximately $1.27 million. Of this cost, approximately $281,000 would be incurred by operators with 20-to-30-seat airplanes and $992,000 by operators with 10-to-19-seat airplanes.

The recurring costs would accrue over the next 10 years as a result of the affected operators having to conduct a part 121 proving test instead of a part 135 proving test. If the prescribed number of hours for part 135 and part 121 operators is 25 and 50 respectively, and the average deviation is 50 percent, then the difference in hours would be 13 [(50–25) × .5]. Also, the FAA found from the survey of its records that, on average, operators conduct one proving test every four years, which equates to approximately two tests over the 10-year period.

If the average number of operators over the next 10 years is 75, then the FAA will conduct approximately 15 ((75 operators × 2 tests)/10 years) proving tests annually—12 for 10-to-19-seat airplanes and 3 for 20-to-30-seat airplanes. The FAA estimates that the increased cost of a proving test per part 135 operator would be $6,040 for a 20-to-30-seat airplane and $5,790 for a 10-to-19-seat airplane. For all affected operators, the proposed rule would impose approximately $87,600 annually in additional costs for proving tests. Over the next 10 years, the total recurring cost of this provision would be $876,000 ($616,000, discounted).

Section 119.67—Directors of maintenance/operations and chief inspector. The proposed rule would impose costs by expanding the applicability of the part 121 director requirements to include the affected part 135 operators. This proposal would impose costs on commuter operators who would have to require directors of maintenance and operations to meet the part 121 employment experience standards.

The proposed rule also would impose costs by expanding the requirements themselves, thereby potentially affecting all part 121 operators. These costs would occur due to the expanded requirement that directors have both technical and management experience. The existing rule requires one or the other. The part 121 standards at issue are as follows:

—Director of Maintenance—five years (instead of three years for part 135 operators) of maintenance experience and one year of managerial or supervisory experience (in part 135 this is optional);

—Director of Operations—three years experience as a pilot in command (same for part 135) and three years supervisory or managerial experience (in part 135 this is optional).

For commuter operators, these new standards could potentially impose increased personnel costs. Costs would accrue to the extent that operators would have to pay higher wages. The FAA has not identified any existing directors (commuter or air carrier) who would not meet the proposed standards. Thus, the proposed rule would not impose any costs initially.

Costs could accrue in the future as new directors need to be hired since commuter operators may have to pay a higher wage that would commensurate with the new experience level. This assumes that a director candidate with two additional years of maintenance experience or a candidate with three additional years of managerial or supervisory experience, for example, would necessarily command a higher wage than someone who did not have the same years of experience. This higher personnel cost also could affect current part 121 operators who, in the future, may be prohibited from hiring director candidates who only have technical or management experience. Under the proposed rule, they would have to hire a candidate with both, and therefore, potentially pay a higher salary.

The proposed rule would also require current commuter operators to designate a chief inspector. The requirements for the chief inspector are that they have one year of experience in a supervisory position maintaining large aircraft. To the extent that an operator does not have anyone who meets this qualification, and therefore, has to hire an additional person, then the proposed rule would impose costs.

The FAA does not know to what extent commuter operators would have to pay director's wages higher than they otherwise would or hire an additional person for chief inspector. In regard to those potential wages and hirings, the FAA solicits comment from the industry.

Section 121.159—Single-engine airplane costs. The proposed rule would prohibit the use of single-engine airplanes in scheduled passenger service under part 121. The FAA has identified 10 single-engine airplanes with 10 seats or more involved in scheduled passenger operations. These airplanes are flown by four commuter operators, all in Alaska. As a result of the proposed rule, these operators would need to either sell these airplanes, change them to all-cargo operations, or remove seats so that there are no more than nine passenger seats. Since most of these planes have 10 passenger seats, the FAA believes that the most probable outcome would be for the operators to remove one passenger seat from scheduled passenger service, and thereby, operate the airplane under part 135.

The FAA assumes that there would be no cost to remove the seats since typically, the tenth passenger seat on these airplanes can also be used as a co-pilot seat since it is located next to the pilot. Thus, operators could avoid the cost of removing the seat by not allowing passengers to sit there. However, potential costs would accrue from the lost revenue that operators would incur from not being able to sell a ticket for that tenth seat.

Costs would accrue to the extent that the reduced capacity (due to the seat removal) would not meet system-wide passenger demand. The FAA used a model that correlates the system-wide load factor to unmet demand (which is the basis to measure revenue loss). From this model, the FAA calculated that an operator would incur lost revenue of $1,535 annually due to the loss of one seat on these airplanes. Total cost of the removal of passenger seats for the 10-year period is $15,350 ($10,781, discounted).

Benefits

The commuter segment of the U.S. airline industry is a vital and growing component of the nation's air carrier system. Commuter aircraft transport passengers between small communities and large hubs, and they play a vital role in transporting passengers over short distances, regardless of airport or community size. In many cases they are a community's only convenient link to the rest of the nation's air transportation system.

Over the past 15 years, the commuter industry has grown considerably. In 1993, for example, enplanements for commuter carriers grew by more than 10 percent, far outpacing the one percent growth of enplanements on larger carriers. Forecasts of commuter industry activity give every indication that growth in this segment of the airline industry will continue to be robust during the next 10 years.

Many commuter carriers operate in partnership with major air carriers, providing transportation to and from hub locations that would be unprofitable with larger aircraft. These partnerships frequently operate within a seamless ticketing environment, in which the major carrier issues a ticket that includes one or more trip segments on a commuter. As these relationships between major carriers and commuter airlines continue to grow, it will become more common for the average long distance flyer to spend some time on a commuter.

The combined effect of a continuing growth in the commuter industry and the ever growing relationship between major carriers and their commuter counterparts will progressively blur the distinction between commuter and major air carriers. In other words, passengers will no longer readily distinguish between one type of carrier and another, but will view each component as simply a part of the nation's air transportation system. Therefore, it is important to establish a common approach toward regulatory safety. Air carrier accidents affect public confidence in air transportation,

perhaps more than accidents in any other mode.

What is the public value or benefit of air transportation? It would be nearly impossible to calculate something that has been so widely accepted in the American lifestyle. One figure that represents the very least value the public places on traveling by air is the annual amount the public spends on air transportation, or in other words, annual air carrier revenues. In 1994, the FAA estimated that amount to be $88 billion. If public confidence wavers by only one percent, annual total air carrier revenues would be reduced by $880 million, which is a minimum dollar estimate of the cost that the public would experience in terms of being denied a fast, safe means of transportation. Some studies have been done to measure the effect of change in public confidence. In 1987, the FAA studied the impact of acts of terrorism on aircraft travel on North Atlantic Routes. Correlations were calculated between the amount of media attention given to a specific act of terrorism and corresponding traffic reductions. The study concluded that there were short-term, carrier-specific correlations between the two. Following a well publicized incident, ridership on the carrier experiencing the incident would drop as much as 50 percent for a few months. In another instance, a major air carrier reported that two catastrophic accidents in 1994 resulted in a half-year revenue loss to that carrier of $150 million. These examples relate to carriers utilizing large aircraft, but point out that public use of air transportation can be affected by the prevailing level of public confidence.

The American public demands a high degree of safety in air travel. This is manifested by the large amount of media attention given to the rare accidents that do occur, by the short term reductions in revenues carriers have experienced following accidents or acts of terrorism, and by the pressure placed on the FAA as the regulator of air safety to further reduce accident rates.

The FAA is confident that the proposed rule would further reduce air carrier accidents. The rule proposes dozens of changes in the way that smaller air carrier airplanes are built, maintained, and operated—all aimed at eliminating or at the very least minimizing the differences between small and large airplanes and the way they operate. Many of these changes result in small, unmeasurable safety improvements when examined in isolation, but taken together result in a measurable difference. That measurable difference ultimately is to bring commuter accident rates down to the very low level of that of the major carriers. That rate is nearing the point of rare, random events.

What follows is a quantified analysis of the potential benefits of the proposed rule based on the assumption that it will bring about further reductions in the commuter accident rate. The analysis finds that measurable potential benefits substantially exceed the cost of the rule, but the FAA believes that the larger but nonquantifiable benefit is public confidence in air transportation.

Potential Safety Benefits. The FAA estimates that from 1996 to 2005, the proposed rule has the potential to prevent approximately 94 accidents, providing an estimated benefit of $555 million (or $393 million, discounted). This benefit is based on the assumption that the proposed rule would significantly close the accident-rate gap between airplanes with 10 to 30 seats now operating under part 135 and airplanes with 31 to 60 seats now operating under part 121. FAA is using the smaller part 121 airplanes for comparison because they operate more similarly to 10-to-30-seat airplanes than do the larger part 121 airplanes.

Typically, the FAA estimates aviation safety benefits based on rates of specific types of accidents that the rulemaking would prevent in the future. However, for this rulemaking, the FAA used a more broad-based accident rate. This approach was adopted because the scope of the various components of the proposed rule covers such a wide range and many of those components are interrelated. For instance, additional safety equipment like PBEs could save lives; but PBEs are of little use if the flight crew is too tired to use them in a timely and correct manner. It would be extremely difficult to determine the benefit of PBEs completely separate from flight-time limitations.

To estimate the potential benefits of the proposed rule, the FAA assembled a database of relevant part 121 and part 135 commuter accidents between 1982 and 1993 based on National Transportation Safety Board (NTSB) accident reports. The FAA then divided the annual number of accidents by the annual number of scheduled departures to get the annual accident rate. The FAA took the difference in annual accident rates for 10-to-30-seat, part 135 airplanes and 31-to-60-seat, part 121 airplanes and multiplied them by the projected annual number of scheduled departures for 10-to-30-seat part 135 airplanes. This gives the projected annual number of accidents that the proposed rule could potentially prevent. The FAA estimates that from 1996 to 2005, the number of accidents that potentially could be prevented is 94. Then, multiplying the number of potentially prevented accidents by the average cost of a part 135 accident ($5.9 million) gives the total potential benefits of the proposed rule, $555 million from 1996 to 2005. The present value of this benefit is $393 million.

The extent to which the accident rate gap could be closed by the proposed rule is not certain. This uncertainty is based on the following factors:

—Inherent differences in airplane performance for airplanes with fewer than 30 seats and airplanes with more than 30 seats;

—Inherent differences within the 10-to-30-seat range, which can include single- and multi-engine piston and turboprop airplanes;

—The proposed regulations would still allow some exemptions for airplanes with 10 to 30 seats, especially with respect to certification;

—Not all part 121 requirements would be applied to 10-to-30-seat airplanes with this proposed rule (flight data recorders, cockpit voice recorders, and crew training for instance);

—To the extent that past FAA rulemaking has been effective in preventing accidents over the years, the accident rates used in this analysis already reflect the accidents prevented by past rulemaking. However, to the extent that some recent rules may not be fully implemented, the potential benefits of the proposed rule will be overstated;

—There is a higher proportion of 10-to-30-seat airplanes operating in Alaska, which has a considerably higher accident rate than the rest of the country;

—In some instances, the proposed rule would not prevent a potential accident but rather mitigate it by lessening the severity of the casualties and airplane damage;

—The accident rates reflect the extent to which part 135 operators are already in compliance with the proposed rule. To the extent that differences in part 121 and part 135 operating procedures and airplane standards can be reduced, so too can the difference in their accident rates.

The extent to which the accident rate gap closes will determine how much of the potential $393 million in potential benefits actually accrues. Given the scope of the proposed rule, the FAA anticipates a significant amount of the accident rate gap to close.

Comparison of Costs and Benefits

The proposed rule is expected to generate safety benefits in the amount of

$555 million ($393 million, discounted) from 1996 to 2005. Over the same period, the proposed rule would impose costs of $275 million ($199 million, discounted).

There are two important points that should be noted about the benefits estimate. First, the estimate has not been adjusted to account for accidents that would be prevented by other NPRMs that the FAA has issued. One NPRM in particular, the Air Carrier Training Program, would prevent many of the same accidents that this proposed rule would prevent (the cost of that rule to commuter operators would be $36 million). Second, the FAA is not certain how effective the proposed rule would be in completely closing the accident rate gap between 10-to-30-seat airplanes and 31-to-60-seat airplanes.

In spite of these uncertainties, the FAA contends that the proposed rule would be cost-beneficial. This assessment is based on the fact that the combined cost of the Air Carrier Training Program NPRM and this NPRM, totaling $235 million ($199 + $36), is still less than the total potential benefits of this NPRM. Both NPRMs would have to be only 60 percent effective in closing the accident rate gap between 10-to-30-seat airplanes and 31-to-60-seat airplanes for the benefits to exceed the costs.

Initial Regulatory Flexibility Determination and Analysis

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A outlines FAA's procedures and criteria for implementing the RFA. With respect to the proposed rule, a "small entity" is a commuter operator (with 10 to 30 seats) that owns, but does not necessarily operate, nine or fewer airplanes. A "significant economic impact on a small entity" is defined as an annualized net compliance cost to a small commuter operator which is greater than or equal to $67,000. A "substantial number of small entities" is defined as a number that is 11 or more and which is more than one-third of the small commuter operators subject to the proposed rule.

A. *Initial regulatory flexibility determination.* The number of small commuter operators that would be affected by the proposed rule was based on the average forecasted number of operators owning 10-to-30-seat airplanes for the 10-year period (1996 to 2005). Using the percentage of small commuter operators to total commuter operators in 1994, the FAA estimates that an average of 24 of the 75 forecasted commuter operators would be defined as small. The FAA also calculates that these 75 operators would own 1,267 airplanes with 10 to 30 seats, of which the 24 small commuter operators would own 108 airplanes. In addition, the FAA estimates that 23 of the 24 small commuter operators would own 105 airplanes with 10 to 19 seats and 2 of the 24 small commuter operators would own 3 airplanes with 20 to 30 seats (this means that one operator owns both 10-to-19-seat airplanes and 20-to-30-seat airplanes.)

The discounted cost of the proposed rule over the 10-year period would be $199 million or about $28 million annualized at 7 percent, of which 1) those operators owning 10 to 19 seat airplanes would account for about $150 million or $21 million annualized and 2) those operators owning 20 to 30 seat airplanes would account for $48 million or $7 million annualized. The 24 small commuter operators would account for $20 million (discounted) or $2.9 million annualized, of which the 23 small commuter operators owning 10-to-19-seat airplanes would account for about $19.9 million (discounted) or about $2.8 million annualized and the 2 small commuter operators owning 20-to-30-seat airplanes would account for about $305,000 (discounted) or about $43,000 annualized. The annualized cost per airplane would be about $27,000 for 10-to-19-seat airplanes and would be about $14,500 for 20-to-30-seat airplanes.

In analyzing the major sections of this proposed rule the FAA estimates that: operations would account for $141 million (discounted) or $20 million annualized; maintenance would account for $90,000 (discounted) or $13,000 annualized; cabin safety would account for $16 million (discounted) or $2 million annualized; part 119 would account for $2 million (discounted) or $236,000 annualized; and certification would account for $39 million (discounted) or $6 million annualized.

Given the threshold annualized cost of $67,000 for a small commuter operator, the FAA estimates that this proposed rule would have a significant economic impact on any operator owning more than two 10 to 19 seat airplanes (2 airplanes x $27,000 per airplane = $54,000) or any operator owning more than four 20 to 30 seat airplanes (4 airplanes x $14,500 per airplane = $58,000). In forecasting the number of airplanes that each small operator would own, the FAA assumed that the existing small operators would continue to own the same number of airplanes they currently own and the additional forecasted number of small operators would each own 9 airplanes that have 10 to 19 seats (so as not to underestimate the impact on small entities). Fourteen small commuter operators owning 10-to-19-seat airplanes and one small commuter operator owning both 10-to-19-seat and 20-to-30-seat airplanes would each incur an annualized cost of more than $67,000. However, the one small commuter operator owning 20-to-30-seat airplanes only would not incur annualized costs exceeding the $67,000 threshold. The FAA has made a determination that the proposed rule would result in a significant economic impact on a substantial number of small entities.

B. *Initial regulatory flexibility analysis.* As the proposed rule could have a significant economic impact on a substantial number of small part 135 commuter operators, an initial regulatory flexibility analysis has been prepared. This analysis assures that agencies have examined selected regulatory alternatives which could minimize the economic burdens of the proposed rule on small entities. As delineated in section 603(b) of the RFA, this initial regulatory flexibility analysis is required to identify: (1) the reasons why the agency is considering the action, (2) the objectives and legal basis for the proposed rule, (3) the kind and number of small entities to which the proposed rule will apply, (4) the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, and (5) all Federal rules which may duplicate, overlap or conflict with the proposed rule. Section 603(c) of the RFA further requires that each initial regulatory flexibility analysis contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. As required by sections 603(b) and (c), the following analysis addresses the proposed rule as it relates to the affected small commuter operators.

A. *Why agency action is taken.* The main reason for this proposal is that the FAA Administrator, when prescribing safety regulations, is required by statute to consider "the duty of an air carrier to provide service with the highest possible degree of safety in the public interest." The FAA has determined that the most appropriate way to meet this statutory mandate is to require scheduled passenger operations in

airplanes with 10 or more passenger seats and scheduled passenger operations in turbojets to meet, where appropriate, at least the minimum requirements of part 121. The need for this rulemaking is supported by a study conducted by the National Transportation Safety Board, testimony from congressional hearings, and accident statistics. More detailed reasons for the agency action are provided in the NPRM.

B. *Objective of and legal basis for the proposed rule.* The objective of the proposed rule is to increase safety in scheduled passenger-carrying operations. The proposed rule would also clarify, update, and consolidate the certification and operations specifications requirements for persons who operate airplanes for compensation or hire. This objective is more thoroughly discussed in the preamble to the NPRM.

The legal basis of the proposed rule is 49 U.S.C. App. 1354(a), 1355, 1356, 1357, 1401, 1421–1431, 1472, 1485, 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

C. *Description of the small entities affected by the proposed rule.* The proposal would require certain commuter operators that now conduct operations under part 135 to conduct those operations under part 121. The commuter operators that would be affected are those conducting scheduled passenger-carrying operations in airplanes that have a passenger seating configuration of 10 to 30 seats and those conducting scheduled operations in turbojets.

The number of small entities that would be affected by the proposed rule is based on the average forecasted number of operators for the 10-year period (1996 to 2005). Using the percentage of small commuter operators to total commuter operators in 1994, the FAA projects that an average of 24 of the 75 forecasted commuter operators would be defined as small. The FAA also estimates that the 75 commuter operators would own 1,267 airplanes, of which the 24 small commuter operators would own 108 airplanes.

D. *Compliance requirements of the proposed rule.* The proposal would require certain part 135 operators to comply with specific part 119 and 121 standards. While all commuter operators owning airplanes with 10 or more passenger seats would come under part 121, wherever compliance would not be feasible for smaller airplanes, part 121 would provide an exception. These exceptions include the requirements for low-altitude windshear equipment, flight data recorders, and flight attendants in airplanes with 10 to 19 passenger seats. In addition, these operators will continue to comply with several part 135 requirements as they currently exist, such as the ground proximity warning system, the traffic alert and collision avoidance system, and cockpit voice recorders. The preamble to the NPRM provides a more thorough discussion of the compliance requirements of the proposed rule.

E. *Overlap of the proposed rule with other Federal regulations.* No other Federal rules would duplicate, overlap, or conflict with the proposed rule.

F. *Alternatives to the proposed rule.* According to the RFA, significant alternatives may include: the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; the use of performance rather than design standards; or an exemption from coverage of the rule, or any part thereof, for such small entities. The FAA considered two alternative approaches to the proposed rule.

Alternative one—retain status quo. This alternative would retain the status quo by allowing part 135 operators to continue operating under the existing part 135 standards. As there would be no changes in the existing requirements, there would be no change in the compliance costs. However, there would also be no improvement in benefits and the level of safety would remain the same for the commuter operators. The FAA rejected this approach because it does not meet the agency's objective of maintaining and enhancing aviation safety for the traveling public.

Alternative two—same as the proposed rule except for elimination of the proposed flight time limitations and rest requirements and the proposed dispatcher requirements. This alternative would be similar to the proposed rule except for elimination of: (1) The proposed flight time limitations and rest requirements for all flight crewmembers and (2) the proposed dispatcher requirements. This means that part 135 commuter operators would not need to hire additional pilots and flight attendants to meet the proposed flight time limitations and rest requirements, resulting in a reduction in proposed compliance costs over the 10-year period of $75 million (discounted) or $11 million annualized. Also, additional dispatchers would not be needed to meet the proposed dispatcher requirements, resulting in a reduction in proposed compliance costs over the 10-year period of $57 million (discounted) or $8 million annualized. Thus, this alternative would result in a compliance cost reduction over the 10-year period of about $132 million (discounted) or about $19 million annualized. By subtracting these compliance costs from those for the proposed rule, the FAA estimates that this alternative would result in compliance costs of about $66 million (discounted) or about $9 million annualized. The annualized cost per airplane would be about $11,100 for 10-to-19 seat airplanes and would be about $1,300 for 20 to 30 seat airplanes.

Given the threshold annualized cost of $67,000 for a small commuter operator, the FAA estimates that this alternative would have a significant economic impact on any operator owning more than six 10-to-19-seat airplanes (6 airplanes x $11,100 per airplane = $66,600) or any operator owning more than fifty-one 20-to-30-seat airplanes (51 airplanes x $1,300 per airplane = $66,300). Six small commuter operators owning 10-to-19-seat airplanes and one small commuter operator owning both 10-to-19-seat and 20-to-30-seat airplanes would each incur an annualized cost of more than $67,000. However, the one small commuter operator owning 20-to-30-seat airplanes only would not incur an annualized cost exceeding the $67,000 threshold. This alternative would not impact a substantial number of small operators. This assessment is based on the fact that only 7 of the 24 small operators would incur costs in excess of the threshold. Therefore, this alternative would not have a significant economic impact on a substantial number of small entities.

Executive Order (E. O.) 12866 states that in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net safety benefits, unless a statute requires another regulatory approach. To ensure that commuter airplanes are as safe as possible, the FAA believes that flight time rest and duty requirements and dispatcher requirements are necessary. With respect to flight time limits, the FAA believes that there is no longer a justification for the difference between commuter operations conducted under part 121 and those conducted under part 135. Both types of operators are conducting similar types of operations in similar environments. In some instances the same operator is flying operations under both parts 121 and 135. With respect to the flight dispatch system, the FAA believes that this system is the safest means for maintaining operational control. It

allows for information relevant to the flight to be accessed and passed on to the pilot throughout the flight. In addition, if an inflight emergency occurs, the pilot and the dispatcher can communicate on the safest measures to follow. A more thorough discussion of the reasons the FAA believes that these requirements are necessary is provided in the preamble. The FAA concludes that the reduction in the estimated compliance costs resulting from elimination of these requirements does not justify the expected significant corresponding decrease in benefits. Therefore, the FAA is rejecting this alternative because it would not maximize net benefits as required under E.O. 12866.

International Trade Impact Assessment

The impact of the proposed rule on international trade is expected to be minimal. With regard to commuter carrier operations, most of the nation's commuter airlines operate on domestic routes, with only limited international operations and no transoceanic routes. These international operations consist of a number of cross-border services between cities in the United States and locations near the borders of Canada and Mexico. There are relatively few carriers engaging in this kind of commuter service, with only a limited number of flights. Most of these services are between points in the border states, such as California, Arizona, New Mexico, Texas, Wisconsin, Michigan, and New York, flying to Mexican and Canadian cities. Therefore, the primary impact of this proposed rule is expected to be in the domestic air carrier market, with little impact on international trade.

Commuter airplanes are sold worldwide, and there are some potential international trade impacts. This rulemaking could impact the competitiveness of airplanes made for the U.S. market that are later resold on the international market. Under the proposed rulemaking, commuter airplanes made for the American market would include new equipment and upgrades necessary to meet the expanded safety requirements. These improvements would increase the cost and maintenance requirements for the airplanes and may negatively affect their sales potential in foreign markets, particularly to customers in developing nations.

Many of the smaller air carriers in the developing world fly under significantly lower safety requirements than are required in the United States. Customers in those countries may not be interested in purchasing airplanes that exceed minimum requirements. Further, these operators may lack the facilities, equipment, and expertise that are necessary to keep these more sophisticated systems operational. Therefore, when purchasing airplanes, either new or second hand, they focus on airplanes that rely on a minimum of complex systems and equipment.

Although sales of smaller airplanes to developing countries represent an important component of the market, the largest markets by far are in North America and western Europe. In this case, since the airplanes would have to operate under similar standards as before their resale, there would be no impact. According to recent estimates, the worldwide market for commuter airplanes is estimated to be almost $20 billion over the next ten years, with a projected 59 percent of those sales occurring in North America. Sales to Europe account for approximately 20 percent of the sales, with the remainder spread throughout the rest of the world. Therefore, this proposed rule would only have a negative impact on less than 21 percent of foreign sales of U.S.-made airplanes.

This proposed rule is also not expected to result in an improved market position for foreign airplane manufacturers. Their status with regard to market share or sales in the U.S. is not expected to change in response to this proposed rule.

Federalism Implications

The proposed 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 are being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. Chapter 35 under OMB No. (new), TITLE: Commuter Operations and General Certification and Operations Requirements; PROPOSED USE OF INFORMATION: The FAA will use this information to determine if carriers are operating in accordance with minimum safety standards; FREQUENCY: As required; BURDEN ESTIMATE: 1,370; RESPONDENTS: Part 135 carriers conducting scheduled passenger-carrying operations in airplanes with 10–30 seats; FORMS: FAA Form 8400–6 and 8070–1; AVERAGE BURDEN HOURS PER RESPONDENT: 18; For further information contact: IRM Strategies Division, M–32, Office of the Secretary of Transportation, 400 Seventh Street, SW, Washington, DC, 20590, (202) 366–4735. Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Washington, DC, 20503, Attention: Desk Officer for FAA. It is requested that comments sent to OMB also be sent to the FAA rulemaking docket for this proposed action.

Conclusion

For the reasons set forth under the heading "Regulatory Analysis," the FAA has determined that this proposed regulation: (1) is a significant rule under Executive Order 12866; and (2) is a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Also, for the reasons stated under the headings "Trade Impact Statement" and "Regulatory Flexibility Determination," the FAA certifies that the proposed rule would have a significant economic impact on a substantial number of small entities. A copy of the full regulatory evaluation is filed in the docket and may also be obtained by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

List of Subjects

14 CFR Part 119

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

14 CFR Part 121

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

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 127

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

14 CFR Part 135

Aircraft, Airplane, Airworthiness, Air transportation.

VIII. The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend the Federal Aviation Regulations (14 CFR parts 119, 121, 125, 127, and 135) as follows:

1. The heading of Subchapter G is revised to read:

SUBCHAPTER G—AIR CARRIERS AND OPERATORS FOR COMPENSATION OR HIRE: CERTIFICATION AND OPERATIONS

2. A new part 119 is added to 14 CFR Chapter I, Subchapter G, to read as follows:

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

Subpart A—General

Sec.

119.1 Applicability.
119.3 Definitions.
119.5 Certification, authorizations, and prohibitions.
119.7 Operations specifications.
119.9 Use of business names.

Subpart B—Applicability of Operating Requirements to Different Kinds of Operations Under Parts 121, 125, and 135 of This Chapter

119.21 Direct air carriers and commercial operators engaged in intrastate common carriage with airplanes.
119.23 Operators engaged in passenger-carrying operations, cargo operations, or both with airplanes when common carriage is not involved.
119.25 Rotorcraft operations: Direct air carriers and commercial operators.

Subpart C—Certification, Operations Specifications, and Certain Other Requirements for Operations Conducted Under Part 121 or Part 135 of this Chapter

119.31 Applicability.
119.33 General requirements.
119.35 Certificate application.
119.37 Contents of an Air Carrier Certificate or Operating Certificate.
119.39 Issuing or denying a certificate.
119.41 Amending a certificate.
119.43 Certificate holder's duty to maintain operations specifications.
119.45 Use of operations specifications.
119.47 Maintaining a principal base of operations, main operations base, and main maintenance base; change of address.
119.49 Contents of operations specifications.
119.51 Amending operations specifications.
119.53 Wet leasing of aircraft.
119.55 Obtaining deviation authority to perform operations under a U.S. military contract.
119.57 Obtaining deviation authority to perform an emergency operation.
119.58 Emergencies requiring immediate decision and action.
119.59 Conducting tests and inspections.
119.61 Duration of certificate and operations specifications.
119.63 Recency of operation.
119.65 Management personnel required for operations conducted under part 121 of this chapter.
119.67 Management personnel: Qualifications for operations conducted under part 121 of this chapter.
119.69 Management personnel required for operations conducted under part 135 of this chapter.
119.71 Management personnel: Qualifications for operations conducted under part 135 of this chapter.

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

Subpart A—General

§ 119.1 Applicability.

(a) This part applies to each person operating or intending to operate civil aircraft—

(1) As an air carrier or commercial operator, or both, in air commerce or

(2) When common carriage is not involved, in operations of U.S.-registered civil airplanes with a seating configuration of 20 or more passengers, or a maximum payload capacity of 6,000 pounds or more.

(b) This part prescribes—

(1) The types of air operator certificates issued by the Federal Aviation Administration, including air carrier certificates and operating certificates;

(2) The certification requirements an operator must meet in order to obtain and hold a certificate authorizing operations under parts 121, 125, or 135 of this chapter and operations specifications for each kind of operation to be conducted and each class and size of aircraft to be operated under part 121 or 135 of this chapter;

(3) The requirements an operator must meet to conduct operations under part 121, 125, or 135 of this chapter and in operating each class and size of aircraft authorized in its operations specifications;

(4) Requirements affecting wet leasing of aircraft;

(5) Requirements for obtaining deviation authority to perform operations under a military contract and obtaining deviation authority to perform an emergency operation; and

(6) Requirements for management personnel for operations conducted under part 121 or part 135 of this chapter.

(c) Persons subject to this part must comply with the other requirements of this chapter, except where those requirements are modified by or where additional requirements are imposed by parts 119, 121, 125, or 135 of this chapter.

(d) This part does not govern operations conducted under part 129, 133, 137, or 139 of this chapter.

(e) Except for operations when common carriage is not involved conducted with airplanes having a passenger-seating configuration of 20 seats or more, excluding any required crewmember seat, or a payload capacity of 6,000 pounds or more, this part does not apply to—

(1) Student instruction;

(2) Nonstop sightseeing flights that begin and end at the same airport and are conducted within a 25 statute mile radius of that airport, except that these operations must comply with §§ 121.455, 121.457, 135.249, 135.251, 135.253, 135.255, and 135.353 of this chapter;

(3) Ferry or training flights;

(4) Aerial work operations, including—

(i) Crop dusting, seeding, spraying, and bird chasing;

(ii) Banner towing;

(iii) Aerial photography or survey;

(iv) Fire fighting;

(v) Helicopter operations in construction or repair work (but it does apply to transportation to and from the site of operations); and

(vi) Powerline or pipeline patrol;

(5) Sightseeing flights conducted in hot air balloons;

(6) Nonstop flights conducted within a 25 statute mile radius of the airport of takeoff carrying persons for the purpose of intentional parachute jumps;

(7) Helicopter flights conducted within a 25 statute mile radius of the airport of takeoff if—

(i) Not more than two passengers are carried in the helicopter in addition to the required flightcrew;

(ii) Each flight is made under day VFR conditions;

(iii) The helicopter used is certificated in the standard category and complies with the 100-hour inspection requirements of part 91 of this chapter;

(iv) The operator notifies the FAA Flight Standards District Office responsible for the geographic area concerned at least 72 hours before each flight and furnishes any essential information that the office requests;

(v) The number of flights does not exceed a total of six in any calendar year;

(vi) Each flight has been approved by the Administrator; and

(vii) Cargo is not carried in or on the helicopter;

(8) Operations conducted under part 133 of this chapter or 375 of this title;

(9) Emergency mail service conducted under 49 U.S.C. 41906; or

(10) Operations conducted under the provisions of § 91.321 of this chapter.

§ 119.3 Definitions.

For the purpose of Subchapter G of this chapter, the term—

All-cargo operation means any operation for compensation or hire that is other than a passenger-carrying operation.

Certificate-holding district office means the Flight Standards District Office that has responsibility for administering the certificate and is charged with the overall inspection of the certificate holder's operations.

Commuter operation means any scheduled operation conducted by any person operating—

(1) Airplanes, other than turbojet powered airplanes, having a maximum passenger-seating configuration of 9 seats or less, excluding any required crewmember seat, and a maximum payload capacity of 7,500 pounds or less or

(2) Rotorcraft.

Direct air carrier means a person who provides or offers to provide air transportation and who has control over the operational functions performed in providing that transportation.

Domestic operation means any scheduled operation conducted by any person operating any airplane described in paragraph (1) of this definition between the locations described in paragraph (2) of this definition:

(1) Airplanes:

(i) Turbojet-powered airplanes;

(ii) Airplanes having a passenger-seating configuration of more than 9 seats, excluding any required crewmember seat; or

(iii) Airplanes having a payload capacity of more than 7,500 pounds.

(2) Locations:

(i) Between any points within the 48 contiguous States of the United States or the District of Columbia; or

(ii) Between any points entirely within any State, territory, or possession of the United States; or

(iii) Between any point within the 48 contiguous States of the United States or the District of Columbia and any specifically authorized point located outside the 48 contiguous States of the United States or the District of Columbia.

Empty weight means the weight of the airframe, engines, propellers, rotors, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

Flag operation means any scheduled operation conducted by any person operating any airplane described in paragraph (1) of this definition between the locations described in paragraph (2) of this definition:

(1) Airplanes:

(i) Turbojet-powered airplanes;

(ii) Airplanes having a passenger-seating configuration of more than 9 seats, excluding any required crewmember seat; or

(iii) Airplanes having a payload capacity of more than 7,500 pounds.

(2) Locations:

(i) Between any point within the State of Alaska or the State of Hawaii or any territory or possession of the United States and any point outside the State of Alaska or the State of Hawaii or any territory or possession of the United States, respectively; or

(ii) Between any point within the 48 contiguous States of the United States or the District of Columbia and any point outside the 48 contiguous States of the United States or the District of Columbia.

Justifiable aircraft equipment means any equipment necessary for the operation of the aircraft. It does not include equipment or ballast specifically installed, permanently or otherwise, for the purpose of altering the empty weight of an aircraft to meet the maximum payload capacity.

Kind of operation means one of the various operations a certificate holder is authorized to conduct, as specified in its operations specifications, i.e., domestic, flag, supplemental, commuter, or on-demand operations.

Maximum payload capacity means:

(1) For an aircraft for which a maximum zero fuel weight is prescribed in FAA technical specifications, the maximum zero fuel weight, less empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flightcrew, foods and beverages, and supplies and equipment related to foods and beverages, but not including disposable fuel or oil).

(2) For all other aircraft, the maximum certificated takeoff weight of an aircraft, less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, and flightcrew). The allowance for the weight of the crew, oil, and fuel is as follows:

(i) Crew—for each crewmember required by the Federal Aviation Regulations—

(A) For male flight crewmembers—180 pounds.

(B) For female flight crewmembers—140 pounds.

(C) For male flight attendants—180 pounds.

(D) For female flight attendants—130 pounds.

(E) For flight attendants not identified by gender—140 pounds.

(ii) Oil—350 pounds.

(iii) Fuel—the minimum weight of fuel required by the applicable Federal Aviation Regulations for a flight between domestic points 174 nautical miles apart under VFR weather conditions that does not involve extended overwater operations.

Maximum zero fuel weight means the maximum permissible weight of an aircraft with no disposable fuel or oil. The zero fuel weight figure may be found in either the aircraft type certificate data sheet, the approved Aircraft Flight Manual, or both.

Noncommon carriage means an aircraft operation for compensation or hire that does not involve a holding out to others.

On-demand operation means any operation for compensation or hire that is one of the following:

(1) Passenger-carrying operations in which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative that are any of the following types of operations:

(i) Common carriage operations conducted with airplanes, including turbojet-powered airplanes, having a passenger-seating configuration of 30 seats or fewer, excluding any required crewmember seat, and a payload capacity of 7,500 pounds or less, except that operations using a specific airplane 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 are considered supplemental operations;

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

(iii) Any rotorcraft operation.

(2) All-cargo operations conducted with airplanes having a payload capacity of 7,500 pounds or less, or with rotorcraft.

Passenger-carrying operation means any aircraft operation carrying any person, unless the only persons on the aircraft are those identified in § 121.583(a) or 135.85 of this chapter, as applicable. An aircraft used in a passenger-carrying operation may also carry cargo or mail in addition to passengers.

Principal base of operations means the primary operating location of a certificate holder as established by the certificate holder.

Provisional airport means an airport approved by the Administrator for use by a certificate holder for the purpose of providing service to a community when the regular airport used by the certificate holder is not available.

Regular airport means an airport used by a certificate holder in scheduled operations and listed in its operations specifications.

Scheduled operation means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial operator for which the certificate holder or its representative offers in advance the departure location, departure time, and arrival location. It does not include any operation that is a charter operation.

Supplemental operation means any common carriage operation for compensation or hire conducted with any airplane described in paragraph (1) of this definition that is a type of operation described in paragraph (2) of this definition:

(1) Airplanes:

(i) Airplanes having a passenger-seating configuration of more than 30 seats, excluding any required crewmember seat;

(ii) Airplanes having a payload capacity of more than 7,500 pounds; or

(iii) Each airplane having a passenger-seating configuration of more than 9 seats and less than 31 seats, excluding any required crewmember seat and any turbojet powered airplane, 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) Types of operation:

(i) Operations for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative or

(ii) All-cargo operations.

Wet lease means any leasing arrangement whereby a person agrees to provide an entire aircraft and at least one crewmember. A wet lease does not include a code-sharing arrangement.

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

(1) Noncommon carriage.

(2) Operations in which persons or cargo are transported without compensation or hire.

(3) Operations not involving the transportation of persons or cargo.

§ 119.5 Certifications, authorizations, and prohibitions.

(a) A person authorized by the Administrator to conduct operations as a direct air carrier will be issued an Air Carrier Certificate.

(b) A person who is not authorized to conduct direct air carrier operations, but who is authorized by the Administrator to conduct operations as a U.S. commercial operator, will be issued an Operating Certificate.

(c) A person who is not authorized to conduct direct air carrier operations, but who is authorized by the Administrator to conduct operations when common carriage is not involved as an operator of U.S.-registered civil airplanes with a seating configuration of 20 or more passengers, or a maximum payload capacity of 6,000 pounds or more, will be issued an Operating Certificate.

(d) A person authorized to engage in common carriage under part 121 or part 135 of this chapter, or both, shall be issued only one certificate authorizing such common carriage, regardless of the kind of operation or the class or size of aircraft to be operated.

(e) A person authorized to engage in noncommon carriage under part 125 or part 135 of this chapter, or both, shall be issued only one certificate authorizing such noncommon carriage, regardless of the kind of operation or the class or size of aircraft to be operated.

(f) A person conducting operations under more than one paragraph of §§ 119.21, 119.23, or 119.25 shall conduct those operations in compliance with—

(1) The requirements specified in each paragraph of those sections for the kind of operation conducted under that paragraph and

(2) The appropriate authorizations, limitations, and procedures specified in the operations specifications for each kind of operation.

(g) No person may operate as a direct air carrier or as a commercial operator without, or in violation of, an appropriate certificate and appropriate operations specifications. No person may operate as a direct air carrier or as a commercial operator in violation of any deviation or exemption authority, if issued to that person or that person's representative.

(h) A person holding an Operating Certificate authorizing noncommon carriage operations shall not conduct any operations in common carriage. A person holding an Air Carrier Certificate or Operating Certificate authorizing common carriage operations shall not conduct any operations in noncommon carriage.

(i) No person may operate as a direct air carrier without holding appropriate economic authority from the Department of Transportation.

(j) A certificate holder under this part may not operate aircraft under part 121 or part 135 of this chapter in a geographical area unless its operations specifications specifically authorize the certificate holder to operate in that area.

§ 119.7 Operations specifications.

(a) Each certificate holder's operations specifications must contain—

(1) The authorizations, limitations, and certain procedures under which each kind of operation, if applicable, is to be conducted and

(2) Certain other procedures under which each class and size of aircraft is to be operated.

(b) Except for operations specifications paragraphs identifying authorized kinds of operations, operations specifications are not a part of a certificate.

§ 119.9 Use of business names.

(a) A certificate holder under this part may not operate an aircraft under part 121 or part 135 of this chapter using a business name other than a business name appearing in the certificate holder's operations specifications.

(b) Unless otherwise authorized by the Assistant Administrator for Civil Aviation Security, no person may operate an aircraft under part 121 or part 135 of this chapter unless the name of the certificate holder who is operating the aircraft is legibly displayed on the aircraft and is clearly visible and readable from the outside of the aircraft to a person standing on the ground at any time except during flight time. The means of displaying the name on the aircraft and its readability must be acceptable to the Administrator.

Subpart B—Applicability of Operating Requirements to Different Kinds of Operations Under Part 121, 125, and 135 of This Chapter

§ 119.21 Direct air carriers and commercial operators engaged in intrastate common carriage with airplanes.

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

(1) Domestic 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 showing of safety in air commerce, the Administrator may permit persons who

conduct domestic operations between any point located within Alaska's Aleutian Islands chain and any point in the State of Alaska to comply with the requirements applicable to flag operations contained in subpart U of part 121 of this chapter.

(2) Flag 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.

(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 the following operations to be conducted under paragraph (a)(1) or (2) of this section:

(i) Passenger-carrying operations which are conducted between points that are also served by the certificate holder's domestic or flag operations.

(ii) All-cargo operations which are conducted regularly and frequently between the same two points.

(4) Commuter operations in accordance with the applicable requirements of part 135 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

(5) On-demand operations in accordance with the applicable requirements of part 135 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

(b) Persons who are subject to the requirements of paragraph (a)(4) of this section may conduct those operations in accordance with the requirements of paragraph (a)(1) or (a)(2) of this section, provided they obtain authorization from the Administrator.

(c) Persons who are subject to the requirements of paragraph (a)(5) of this section may conduct those operations in accordance with the requirements of paragraph (a)(3) of this section, provided they obtain authorization from the Administrator.

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

(a) Each person who conducts operations when common carriage is not involved with airplanes having a passenger-seating configuration of 20 seats or more, excluding any required crewmember seat, or a payload capacity of 6,000 pounds or more, shall, unless deviation authority is issued:

(1) Comply with the certification and operations specifications requirements of part 125 of this chapter;

(2) Conduct its operations with those airplanes in accordance with the requirements of part 125 of this chapter; and

(3) Be issued operations specifications in accordance with those requirements.

(b) Each person who conducts noncommon carriage operations for compensation or hire with airplanes having a passenger-seating configuration of less than 20 seats, excluding any required crewmember seat, and a payload capacity of less than 6,000 pounds shall:

(1) Comply with the certification and operations specifications requirements in Subpart C of this part;

(2) Conduct those operations in accordance with the requirements of part 135 of this chapter, except for those requirements applicable only to commuter operations; and

(3) Be issued operations specifications in accordance with those requirements.

§ 119.25 Rotorcraft operations: direct air carriers and commercial operators.

Each person who conducts rotorcraft operations for compensation or hire must comply with the certification and operations specifications requirements of Subpart C of this part, and shall conduct its:

(a) Commuter operations in accordance with the applicable requirements of part 135 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

(b) On-demand operations in accordance with the applicable requirements of part 135 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

Subpart C—Certification, Operations Specifications, and Certain Other Requirements for Operations Conducted Under Part 121 or Part 135 of this Chapter

§ 119.31 Applicability.

This subpart sets out certification requirements and prescribes the content of operations specifications and certain other requirements for operations conducted under part 121 or part 135 of this chapter.

§ 119.33 General requirements.

(a) A person may not operate as a direct air carrier unless that person—

(1) Is a citizen of the United States;

(2) Obtains an Air Carrier Certificate; and

(3) Obtains operations specifications that prescribe the authorizations, limitations, and procedures under which each kind of operation must be conducted.

(b) A person other than a direct air carrier may not conduct any commercial passenger or cargo aircraft operation for compensation or hire under part 121 or part 135 of this chapter unless that person—

(1) Is a citizen of the United States;

(2) Obtains an Operating Certificate; and

(3) Obtains operations specifications that prescribe the authorizations, limitations, and procedures under which each kind of operation must be conducted.

(c) Each applicant for a certificate under this part shall conduct proving tests as authorized by the Administrator during the application process for authority to conduct operations under part 121 or 135 of this chapter. All proving tests must be conducted in a manner acceptable to the Administrator. All proving tests must be conducted under the appropriate operating and maintenance requirements of part 121 or 135 of this chapter that would apply if the applicant were fully certificated. The Administrator will issue a letter of authorization to each person stating the various authorities under which the proving tests shall be conducted.

§ 119.35 Certificate application.

(a) A person applying to the Administrator for an Air Carrier Certificate or Operating Certificate under this part (applicant) must submit an application—

(1) In a form and manner prescribed by the Administrator and

(2) Containing any information the Administrator requires the applicant to submit.

(b) Each applicant must submit the application to the Administrator at least 90 days before the date of intended operation.

(c) Each applicant for the original issue of an operating certificate for the purpose of conducting intrastate common carriage operations under part 121 or part 135 of this chapter must submit an application in a form and manner prescribed by the Administrator to the Flight Standards District Office in whose area the applicant proposes to establish or has established his or her principal operations base.

(d) Each application submitted under paragraph (c) of this section must contain a signed statement showing the following:

(1) For corporate applicants:

(i) The name and address of each stockholder who owns five percent or more of the total voting stock of the corporation, and if that stockholder is not the sole beneficial owner of the stock, the name and address of each beneficial owner. An individual is considered to own the stock owned, directly or indirectly, by or for his or her spouse, children, grandchildren, or parents.

(ii) The name and address of each director and each officer, and each person employed or who will be employed in a management position described in §§ 119.65 and 119.69, as applicable.

(iii) The name and address of each person directly or indirectly controlling or controlled by the applicant, and each person under direct or indirect control with the applicant.

(2) For non-corporate applicants:

(i) The name and address of each person having a financial interest therein and the nature and extent of that interest.

(ii) The name and address of each person employed or who will be employed in a management position described in §§ 119.65 and 119.69, as applicable.

(e) In addition, each applicant for the original issue of an operating certificate must submit with the application a signed statement showing—

(1) The financial information listed in paragraph (h) of this section; and

(2) The nature and scope of its intended operation, including the name and address of each person, if any, with whom the applicant has a contract to provide services as a commercial operator and the scope, nature, date, and duration of each of those contracts.

(f) Each applicant for, or holder of, a certificate issued under this part, shall notify the Administrator within 10 days after—

(1) A change in any of the persons, or the names and addresses of any of the persons, submitted to the Administrator under paragraph (d)(1) or (d)(2) of this section; or

(2) A change in the financial information submitted to the Administrator under paragraph (h) of this section that occurs while the application for the issue is pending before the FAA and that would made the applicant's financial situation substantially less favorable than originally reported.

(g) Each financial statement containing financial information required by paragraph (h) of this section 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.

(h) Each applicant for the original issue of an operating certificate must submit the following financial information:

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

(2) 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.

(3) 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.

(4) A detailed projection of the proposed operation covering 6 complete months after the month in which the certificate is expected to be issued including—

(i) Estimated amount and source of both operating and nonoperating revenue, including identification of its existing and anticipated income producing contracts and estimated revenue per mile or hour of operation by aircraft type;

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

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

(5) 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—

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

(ii) Retirement of debt (explain);

(iii) Additional working capital (explain);

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

(v) Other (explain).

(6) 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—

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

(ii) New debt (explain);

(iii) New equity (explain);

(iv) Working capital reduction (explain);

(v) Operations (profits) (explain);

(vi) Depreciation and amortization (explain); and

(vii) Other (explain).

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

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

§ 119.37 Contents of an Air Carrier Certificate or Operating Certificate.

The Air Carrier Certificate or Operating Certificate includes—

(a) The certificate holder's name;

(b) The location of the certificate holder's principal base of operations;

(c) The certificate number;

(d) The certificate's effective date;

(e) The name or the designator of the certificate-holding district office;

(f) Kinds of operations authorized; and

(g) A certification that—

(1) In the case of an Air Carrier certificate, the certificate holder meets the appropriate requirements of this chapter and holds any required economic authority from the Department of Transportation, authorizing it to conduct common carriage operations or

(2) In the case of an Operating Certificate, the certificate holder—

(i) Meets the appropriate requirements of this chapter authorizing it to conduct intrastate common carriage operations or

(ii) Meets the appropriate requirements of this chapter authorizing it to conduct noncommon carriage operations.

§ 119.39 Issuing or denying a certificate.

(a) An applicant may be issued an Air Carrier Certificate or Operating Certificate if after investigation, the Administrator finds that the applicant—

(1) Meets the applicable requirements of this part;

(2) Holds the economic authority applicable to the kinds of operations to be conducted, issued by the Department of Transportation, if required; and

(3) Is properly and adequately equipped in accordance with the requirements of this chapter and is able to conduct a safe operation under appropriate provisions of part 121 or part 135 of this chapter and operations specifications issued under this part.

(b) An application for a certificate may be denied if the Administrator finds that—

(1) The applicant is not properly or adequately equipped or is not able to conduct safe operations under this subchapter;

(2) The applicant previously held an Air Carrier Certificate or Operating Certificate which was revoked;

(3) The applicant intends to or fills a key management position listed in § 119.65(a) or § 119.69(a), as applicable, with an individual who exercised control over or who held the same or a similar position with a certificate holder whose certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation or causing the revocation process;

(4) An individual who will have control over or have a substantial ownership interest in the applicant had the same or similar control or interest in a certificate holder whose certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation or causing the revocation process; or

(5) In the case of an applicant for an Operating Certificate for intrastate common carriage that for financial reasons the applicant is not able to conduct a safe operation.

§ 119.41 Amending a certificate.

(a) The Administrator may amend any certificate issued under this part if—

(1) The Administrator under section 609 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1429), and part 13 of this chapter, determines that safety in air commerce and the public interest requires the amendment or

(2) The certificate holder applies for the amendment and the certificate holding district office determines that safety in air commerce and the public interest allows the amendment.

(b) When the Administrator proposes to issue an order amending, suspending, or revoking all or part of any certificate, the procedure in § 13.19 of this chapter applies.

(c) When the certificate holder applies for an amendment of its certificate, the following procedure applies:

(1) The certificate holder must file an application to amend its certificate with the certificate holding district office at least 15 days before the date proposed by the applicant for the amendment to become effective, unless the administrator approves filing within a shorter period and

(2) The application must be submitted to the certificate-holding district office in the form and manner prescribed by the Administrator.

(d) When a certificate holder seeks reconsideration of a decision from the certificate-holding district office concerning amendments of a certificate, the following procedure applies:

(1) The petition for reconsideration must be made within 30 days after the certificate holder receives the notice of denial and

(2) The certificate holder must petition for reconsideration to the Director, Flight Standards Service.

§ 119.43 Certificate holder's duty to maintain operations specifications.

(a) Each certificate holder shall maintain a complete and separate set of its operations specifications at its principal base of operations.

(b) Each certificate holder shall insert pertinent excerpts of its operations specifications, or references thereto, in its manual and shall—

(1) Clearly identify each such excerpt as a part of its operations specifications and

(2) State that compliance with each operations specifications requirement is mandatory.

§ 119.45 Use of operations specifications.

(a) Each certificate holder shall keep each of its employees and other persons used in its operations informed of the provisions of its operations specifications that apply to that employee's or person's duties and responsibilities.

(b) Each certificate holder shall maintain a complete and separate set of its operations specifications. In addition, each certificate holder shall insert pertinent excerpts of its operations specifications, or reference thereto, in its manual in such a manner that they retain their identity as operations specifications.

§ 119.47 Maintaining a principal base of operations, main operations base, and main maintenance base; change of address.

(a) Each certificate holder must maintain a principal base of operations. Each certificate holder may also establish a main operations base and a main maintenance base which may be located at either the same location as the principal base of operations or at separate locations.

(b) At least 30 days before it proposes to establish or change the location of its principal base of operations, its main operations base, or its main maintenance base, a certificate holder must provide written notification to its certificate holding district office.

§ 119.49 Contents of operations specifications.

(a) Each certificate holder conducting domestic, flag, or commuter operations must obtain operations specifications containing all of the following:

(1) The specific location of the certificate holder's principal base of operations and, if different, the address that shall serve as the primary point of contact for correspondence between the FAA and the certificate holder and the name and mailing address of the certificate holder's agent for service.

(2) Other business names under which the certificate holder may operate.

(3) Reference to the economic authority issued by the Department of Transportation, if required.

(4) Type of aircraft, registration markings, and serial numbers of each aircraft authorized for use, and each regular and alternate airport to be used in scheduled operations, and, except for commuter operations, each provisional and refueling airport.

(i) Subject to the approval of the Administrator with regard to form and content, the certificate holder may incorporate by reference the items listed in paragraph (a)(4) of this section into the certificate holder's operations specifications by maintaining a current listing of those items and by referring to the specific list in the applicable paragraph of the operations specifications.

(ii) The certificate holder may not conduct any operation using any aircraft or airport not listed.

(5) Kinds of operations authorized.

(6) Authorization and limitations for routes and areas of operations.

(7) Airport limitations.

(8) Time limitations, or standards for determining time limitations, for overhauling, inspecting, and checking airframes, engines, propellers, appliances, and emergency equipment.

(9) Authorization for the method of controlling weight and balance of aircraft.

(10) Interline equipment interchange requirements, if relevant.

(11) Aircraft wet lease information required by § 119.53(c).

(12) Any authorized deviation and exemption granted from any requirement of this chapter.

(13) Any other item the Administrator determines is necessary.

(b) Each certificate holder conducting supplemental operations must obtain operations specifications containing all of the following:

(1) The specific location of the certificate holder's principal base of operations, and, if different, the address

that shall serve as the primary point of contact for correspondence between the FAA and the certificate holder and the name and mailing address of the certificate holder's agent for service.

(2) Other business names under which the certificate holder may operate.

(3) Reference to the economic authority issued by the Department of Transportation, if required.

(4) Type of aircraft, registration markings, and serial number of each aircraft authorized for use.

(i) Subject to the approval of the Administrator with regard to form and content, the certificate holder may incorporate by reference the items listed in paragraph (b)(4) of this section into the certificate holder's operations specifications by maintaining a current listing of those items and by referring to the specific list in the applicable paragraph of the operations specifications.

(ii) The certificate holder may not conduct any operation using any aircraft not listed.

(5) Kinds of operations authorized.

(6) Authorization and limitations for routes and areas of operations.

(7) Special airport authorizations and limitations.

(8) Time limitations, or standards for determining time limitations, for overhauling, inspecting, and checking airframes, engines, propellers, appliances, and emergency equipment.

(9) Authorization for the method of controlling weight and balance of aircraft.

(10) Aircraft wet lease information required by § 119.53(c).

(11) Any authorization or requirement to conduct supplemental operations as provided by § 119.21(a)(3) (i) or (ii).

(12) Any authorized deviation or exemption from any requirement of this chapter.

(13) Any other item the Administrator determines is necessary.

(c) Each certificate holder conducting on-demand operations must obtain operations specifications containing all of the following:

(1) The specific location of the certificate holder's principal base of operations, and if different, the address that shall serve as the primary point of contact for correspondence between the FAA and the name and mailing address of the certificate holder's agent for service.

(2) Other business names under which the certificate holder may operate.

(3) Reference to the economic authority issued by the Department of Transportation, if required.

(4) Kind and area of operations authorized.

(5) Category and class of aircraft that may be used in those operations.

(6) Type of aircraft, registration markings, and serial number of each aircraft that is subject to an airworthiness maintenance program required by § 135.411(a)(2) of this chapter.

(i) Subject to the approval of the Administrator with regard to form and content, the certificate holder may incorporate by reference the items listed in paragraph (c)(6) of this section into the certificate holder's operations specifications by maintaining a current listing of those items and by referring to the specific list in the applicable paragraph of the operations specifications.

(ii) The certificate holder may not conduct any operation using any aircraft not listed.

(7) Registration markings of each aircraft that is to be inspected under an approved aircraft inspection program under § 135.419 of this chapter.

(8) Time limitations or standards for determining time limitations, for overhauls, inspections, and checks for airframes, engines, propellers, rotors, appliances, and emergency equipment of aircraft that are subject to an airworthiness maintenance program required by § 135.411(a)(2) of this chapter.

(9) Additional maintenance items required by the Administrator under § 135.421 of this chapter.

(10) Aircraft wet lease information required by § 119.53(c).

(11) Any authorized deviation or exemption from any requirement of this chapter.

(12) Any other item the Administrator determines is necessary.

(d) Each certificate holder shall keep each of its employees informed of the provisions of its operations specifications that apply to the employee's duties and responsibilities.

§ 119.51 Amending operations specifications.

(a) The Administrator may amend any operations specifications issued under this part if—

(1) The Administrator, on his own initiative, determines that safety in air commerce and the public interest require the amendment or

(2) The certificate holder applies for the amendment, and the Administrator determines that safety in air commerce and the public interest allows the amendment.

(b) Except as provided in paragraph (e) of this section, when the Administrator initiates an amendment to a certificate holder's operations specifications, the following procedure applies:

(1) The certificate-holding district office notifies the certificate holder in writing of the proposed amendment.

(2) The certificate-holding district office sets a reasonable period (but not less than seven days) within which the certificate holder may submit written information, views, and arguments on the amendment.

(3) After considering all material presented, the certificate-holding district office notifies the certificate holder of—

(i) The adoption of the proposed amendment;

(ii) The partial adoption of the proposed amendment; or

(iii) The withdrawal of the proposed amendment.

(4) If the certificate-holding district office issues an amendment to the operations specifications, it becomes effective not less than 30 days after the certificate holder receives notice of it unless—

(i) The certificate-holding district office finds under paragraph (e) of this section that there is an emergency requiring immediate action with respect to safety in air commerce or

(ii) The certificate holder petitions for reconsideration of the amendment under paragraph (d) of this section.

(c) When the certificate holder applies for an amendment to its operations specifications, the following procedure applies:

(1) The certificate holder must file an application to amend its operations specifications—

(i) At least 90 days before the date proposed by the applicant for the amendment to become effective in cases of mergers; acquisitions of airline operational assets that require an additional showing of safety (e.g., proving tests); changes in the kind of operation as defined in § 119.3; resumption of operations following a suspension of operations as a result of bankruptcy actions; or the initial introduction of aircraft not before proven for use in air carrier or commercial operator operations.

(ii) At least 15 days before the date proposed by the applicant for the amendment to become effective in all other cases.

(2) The application must be submitted to the certificate-holding district office in a form and manner prescribed by the Administrator.

(3) After considering all material presented, the certificate-holding

district office notifies the certificate holder of—

(i) The adoption of the applied for amendment;

(ii) The partial adoption of the applied for amendment; or

(iii) The denial of the applied for amendment. The certificate holder may petition for reconsideration of a denial under paragraph (d) of this section.

(4) If the certificate-holding district office approves the amendment, following coordination with the certificate holder regarding its implementation, the amendment is effective on the date the Administrator approves it.

(d) When a certificate holder seeks reconsideration of a decision from the certificate-holding district office concerning the amendment of operations specifications the following procedure applies:

(1) The certificate holder must petition for reconsideration of that decision within 30 days of the date that the certificate holder receives a notice of denial of the amendment to its operations specifications, or of the date it receives notice of an FAA-initiated amendment to its operations specifications, whichever circumstance applies.

(2) The certificate holder must address its petition to the Director, Flight Standards Service.

(3) A petition for reconsideration, if filed within the 30-day period, suspends the effectiveness of any amendment issued by the certificate-holding district office unless the certificate holding district office has found, under paragraph (e) of this section, that an emergency exists requiring immediate action with respect to safety in air transportation or air commerce.

(4) If a petition for reconsideration is not filed within 30 days, the procedures of paragraph (c) of this section apply.

(e) If the certificate-holding district office finds that an emergency exists requiring immediate action with respect to safety in air commerce or air transportation that makes the procedures set out in this section impracticable or contrary to the public interest:

(1) The certificate-holding district office amends the operations specifications and makes the amendment effective on the day the certificate holder receives notice of it.

(2) In the notice to the certificate holder, the certificate-holding district office articulates the reasons for its finding that an emergency exists requiring immediate action with respect to safety in air transportation or air commerce or that makes it impracticable or contrary to the public interest to stay the effectiveness of the amendment.

§ 119.53 Wet leasing of aircraft.

(a) Prior to conducting operations involving a wet lease, each certificate holder under this part authorized to conduct common carriage operations under this subchapter shall provide the Administrator with a copy of the wet lease to be executed which would lease the aircraft to any other person engaged in common carriage operations under this subchapter including foreign air carriers or to any other foreign person engaged in common carriage wholly outside the United States.

(b) No certificate holder under this part may wet lease from a foreign air carrier or any other foreign person or any person not authorized to engage in common carriage.

(c) Upon receiving a copy of a wet lease, the Administrator determines which party to the agreement has operational control of the aircraft and issues amendments to the operations specifications of each party to the agreement, as needed. The lessor must provide the following information to be incorporated into the operations specifications of both parties, as needed.

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

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

(3) The kind of operation (e.g., domestic, flag, supplemental, commuter, or on-demand).

(4) The airports or areas of operation.

(5) A statement specifying the party deemed to have operational control and the times, airports, or areas under which such operational control is exercised.

(d) In making the determination of paragraph (c) of this section, the Administrator will consider 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.

(e) Except as provided in paragraph (f) of this section, a certificate holder under this part operating under part 121 or 135 of this chapter may not conduct any operation for another certificate holder under this part or a foreign air carrier under part 129 of this chapter or a foreign person engaged in common carriage wholly outside the United States unless it holds applicable Department of Transportation economic authority, if required, and is authorized under its operations specifications to conduct the same kinds of operations (as defined in § 119.3). The certificate holder conducting the substitute operation must conduct that operation in accordance with the same operations authority held by the certificate holder arranging for the substitute operation. These substitute operations must be conducted between airports for which the substitute certificate holder holds authority for scheduled operations or within areas of operations for which the substitute certificate holder has authority for supplemental or on-demand operations.

(f) A certificate holder under this part may, if authorized by the Department of Transportation under § 380.3 of this title and the Administrator in the case of interstate commuter, interstate domestic, and flag operations, or the Administrator in the case of scheduled intrastate common carriage operations, conduct one or more wet-lease charter flights for passengers who are stranded because of the cancellation of their scheduled flights. The wet-lease charter flights must be conducted under the rules of part 121 or part 135 of this chapter applicable to supplemental or on-demand operations.

§ 119.55 Obtaining deviation authority to perform operations under a U.S. military contract.

(a) The Administrator may authorize a certificate holder that is authorized to conduct supplemental or on-demand operations to deviate from the applicable requirements of this part, part 121, or part 135 of this chapter in order to perform operations under a U.S. military contract.

(b) A certificate holder that has a contract with the U.S. Department of Defense's Air Mobility Command (AMC) must submit a request for deviation authority to AMC. AMC will review the requests, then forward the carriers' consolidated requests, along with AMC's recommendations, to the FAA for review and action.

(c) The Administrator may authorize a deviation to perform operations under a U.S. military contract under the following conditions—

(1) The Department of Defense certifies to the Administrator that the operation is essential to the national defense;

(2) The Department of Defense further certifies that the certificate holder cannot perform the operation without deviation authority;

(3) The certificate holder will perform the operation under a contract or subcontract for the benefit of a U.S armed service; and

(4) The Administrator finds that the deviation is based on grounds other than economic advantage either to the certificate holder or to the United States.

(d) In the case where the Administrator authorizes a deviation under this section, the Administrator will issue an appropriate amendment to the certificate holder's operations specifications.

(e) The Administrator may, at any time, terminate any grant of deviation authority issued under this section.

§ 119.57 Obtaining deviation authority to perform an emergency operation.

(a) In emergency conditions, the Administrator may authorize deviations if—

(1) Those conditions necessitate the transportation of persons or supplies for the protection of life or property, and

(2) The Administrator finds that a deviation is necessary for the expeditious conduct of the operations.

(b) When the Administrator authorizes deviations for operations under emergency conditions—

(1) The Administrator will issue an appropriate amendment to the certificate holder's operations specifications; or

(2) If the nature of the emergency does not permit timely amendment of the operations specifications—

(i) The Administrator may authorize the deviation orally; and

(ii) The certificate holder shall provide documentation describing the nature of the emergency to the certificate-holding district office within 24 hours after completing the operation.

§ 119.58 Emergencies requiring immediate decision and action.

(a) In an emergency situation that requires immediate decision and action, the pilot in command may take any action that he considers necessary under the circumstances. In such a case, he may deviate from prescribed operations procedures and methods, weather minimums, and this chapter to the extent required in the interest of safety.

(b) In an emergency situation arising during flight, that requires immediate decision and action by an aircraft dispatcher or appropriate management personnel, and that is known to him, he shall advise the pilot in command of the emergency, shall ascertain the decision of the pilot in command, and shall have the decision recorded. If he cannot communicate with the pilot, he shall declare an emergency and take any reasonable action necessary under the circumstances.

(c) Whenever a pilot in command or a dispatcher or an appropriate management person exercises emergency authority, he shall keep the appropriate ATC facility, ground radio station, and, if applicable, dispatch centers, fully informed of the progress of the flight. The person declaring the emergency shall send a written report of any deviation through the certificate holder's management to the Administrator within 10 days of the emergency action.

§ 119.59 Conducting tests and inspections.

(a) At any time or place, the Administrator may conduct an inspection or test to determine whether a certificate holder under this part is complying with the Federal Aviation Act of 1958, as amended, applicable regulations, the certificate, or the certificate holder's operations specifications.

(b) The certificate holder must—

(1) Make available to the Administrator at the certificate holder's principal base of operations—

(i) The certificate holder's Air Carrier Operating Certificate or the certificate holder's Operating Certificate and the certificate holder's operations specifications and

(ii) A current listing that will include the location and persons responsible for each record, document, and report required to be kept by the certificate holder under this title applicable to the operation of the certificate holder.

(2) Allow the Administrator to make any test or inspection to determine compliance respecting any matter stated in paragraph (a) of this section.

(c) Each employee of, or person used by, the certificate holder who is responsible for maintaining the certificate holder's records must make those records available to the Administrator.

(d) The Administrator may determine a certificate holder's continued eligibility to hold its certificate and/or operations specifications on any grounds listed in paragraph (a) of this section, or any other appropriate grounds.

(e) Failure by any certificate holder to make available to the Administrator upon request, the certificate, operations specifications, or any required record, document, or report is grounds for suspension of all or any part of the certificate holder's certificate and operations specifications.

(f) In the case of operators conducting intrastate common carriage operations, these inspections and tests include inspections and tests of financial books and records.

§ 119.61 Duration of certificate and operations specifications.

(a) An Air Carrier Certificate or Operating Certificate issued under this part is effective until—

(1) The certificate holder surrenders it to the Administrator or

(2) The Administrator suspends, revokes, or otherwise terminates the certificate.

(b) Operations specifications issued under this part, part 121, or part 135 of this chapter are effective unless—

(1) The Administrator suspends, revokes, or otherwise terminates the certificate;

(2) The operations specifications are amended as provided in § 119.49;

(3) The certificate holder does not conduct a kind of operation for more than thirty days and fails to follow the procedures of § 119.63 upon resuming that kind of operation; or

(4) The Administrator suspends or revokes the operations specifications for a kind of operation.

§ 119.63 Recency of operation.

(a) Except as provided in paragraph (b) of this section, no certificate holder may conduct a kind of operation for which it holds authority in its operations specifications unless within the preceding 30 consecutive calendar days the certificate holder conducted such kind 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 preceding 30 consecutive calendar days it shall not conduct such kind of operation unless—

(1) It advises the Administrator at least 5 consecutive calendar days prior to resumption of that kind of operation and

(2) It makes itself available and accessible during the five consecutive calendar day period in the event that the FAA decides to conduct a full reexamination to determine whether the certificate holder remains properly and adequately equipped and able to conduct a safe operation.

§ 119.65 Management personnel required for operations conducted under part 121 of this chapter.

(a) Each certificate holder must have sufficient qualified management and technical personnel to ensure the highest degree of safety in its operations. The certificate holder must have qualified personnel serving full-time in the following or equivalent positions:

(1) Director of Safety.

(2) Director of Operations.

(3) Chief Pilot.

(4) Director of Maintenance.
(5) Chief Inspector.
(b) The Administrator may approve positions or numbers of positions other than those listed in paragraph (a) of this section for a particular operation if the certificate holder shows that it can perform the operation with the highest degree of safety under the direction of fewer or different categories of management personnel due to—
(1) The kind of operation involved;
(2) The number and type of aircraft used; and
(3) The area of operations.
(c) The title of the positions required under paragraph (a) of this section or the title and number of equivalent positions approved under paragraph (b) of this section shall be set forth in the certificate holder's operations specifications.
(d) The individuals who serve in the positions required or approved under paragraph (a) or (b) of this section and anyone in a position to exercise control over operations conducted under the operating certificate must—
(1) Pe qualified through training, experience, and expertise;
(2) To the extent of their responsibilities, have a full understanding of the following materials with respect to the certificate holder's operation—
(i) Aviation safety standards and safe operating practices;
(ii) Federal Aviation Regulations;
(iii) The certificate holder's operations specifications;
(iv) All appropriate maintenance and airworthiness requirements of this chapter (e.g., parts 1, 21, 23, 25, 43, 45, 47, 65, 91, and 121 of this chapter); and
(v) The manual required by § 121.133 of this chapter; and
(3) Discharge their duties to meet applicable legal requirements and to maintain safe operations.
(e) Each certificate holder must:
(1) State in the general policy provisions of the manual required by § 121.133 of this chapter, the duties, responsibilities, and authority of personnel required under paragraph (a) of this section;
(2) List in the manual the names and business addresses of the individuals assigned to those positions; and
(3) Notify the certificate-holding district office within 10 days of any change in personnel or any vacancy in any position listed.

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

(a) To serve as Director of Operations under § 119.65(a) a person must—
(1) Hold an airline transport pilot certificate;
(2) Have at least 3 years supervisory or managerial experience within the last 6 years in a position that exercised operational control over any operations conducted with large aircraft under part 121 or part 135 of this chapter; and
(3) In the case of a person becoming a Director of Operations—
(i) For the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of a large aircraft operated under part 121 or part 135 of this chapter.
(ii) In the case of a person with previous experience as a Director of Operations, have at least 3 years experience as pilot in command of a large aircraft operated under part 121 or part 135 of this chapter.
(b) To serve as Chief Pilot under § 119.65(a) a person must hold an airline transport pilot certificate with appropriate ratings for at least one of the aircraft used in the certificate holder's operation and:
(1) In the case of a person becoming a Chief Pilot for the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of a large aircraft operated under part 121 or part 135 of this chapter.
(2) In the case of a person with previous experience as a Chief Pilot, have at least 3 years experience, as pilot in command of a large aircraft operated under part 121 or part 135 of this chapter.
(c) To serve as Director of Maintenance under § 119.65(a) a person must—
(1) Hold a mechanic certificate with airframe and power plant ratings;
(2) Have 1 year of experience in a position responsible for returning aircraft to service;
(3) Have at least 1 year of experience in a supervisory capacity under either paragraph (c)(4)(i) or (c)(4)(ii) of this section maintaining the same category and class of airplane as the certificate holder uses; and
(4) Have 5 years experience within the past 5 years in one or a combination of the following—
(i) Maintaining large aircraft, including at the time of appointment as Director of Maintenance, experience in maintaining the same category and class of aircraft as the certificate holder uses or
(ii) Repairing aircraft in a certificated airframe repair station that is rated to maintain aircraft in the same category and class of aircraft as the certificate holder uses.
(d) To serve as Chief Inspector under § 119.65(a) a person must—
(1) Hold a mechanic certificate with both airframe and power plant ratings, and have held these ratings for at least 3 years; and
(2) Have at least 3 years of maintenance experience on different types of large aircraft with an air carrier or certificated repair station, 1 year of which must have been as maintenance inspector; and
(3) Have at least 1 year in a supervisory capacity maintaining large aircraft.
(e) The Manager of the Flight Standards Division in the region of the certificate-holding district office may authorize a certificate holder to employ a person who does not meet the appropriate airman, managerial, or supervisory experience requirements of this section if the Manager of the Flight Standards Regional Division finds that the person has comparable experience.

§ 119.69 Management personnel required for operations conducted under part 135 of this chapter.

(a) Each certificate holder must have sufficient qualified management and technical personnel to ensure the safety of its operations. Except for a certificate holder using only 1 pilot in its operations, the certificate holder must have qualified personnel serving in the following or equivalent positions:
(1) Director of Operations.
(2) Chief Pilot.
(3) Director of Maintenance.
(b) The Administrator may approve positions or numbers of positions other than those listed in paragraph (a) of this section for a particular operation if the certificate holder shows that it can perform the operation with the highest degree of safety under the direction of fewer or different categories of management personnel due to—
(1) The kind of operation involved;
(2) The number and type of aircraft used; and
(3) The area of operations.
(c) The title of the positions required under paragraph (a) of this section or the title and number of equivalent positions approved under paragraph (b) of this section shall be set forth in the certificate holder's operations specifications.
(d) The individuals who serve in the positions required or approved under paragraph (a) or (b) of this section and anyone in a position to exercise control over operations conducted under the operating certificate must—
(1) Be qualified through training, experience, and expertise;
(2) To the extent of their responsibilities, have a full understanding of the following material

with respect to the certificate holder's operation—

(i) Aviation safety standards and safe operating practices;

(ii) Federal Aviation Regulations;

(iii) The certificate holder's operations specifications;

(iv) All appropriate maintenance and airworthiness requirements of this chapter (e.g., parts 1, 21, 23, 25, 43, 45, 47, 65, 91, and 135 of this chapter); and

(v) The manual required by § 135.21 of this chapter; and

(3) Discharge their duties to meet applicable legal requirements and to maintain safe operations.

(e) Each certificate holder must—

(1) State in the general policy provisions of the manual required by § 135.21 of this chapter, the duties, responsibilities, and authority of personnel required or approved under paragraph (a) or (b), respectively, of this section;

(2) List in the manual the names and business addresses of the individuals assigned to those positions; and

(3) Notify the certificate-holding District Office within 10 days of any change in personnel or any vacancy in any position listed.

§ 119.71 Management personnel: Qualifications for operations conducted under part 135 of this chapter.

(a) To serve as Director of Operations under § 119.69(a) for a certificate holder conducting any operations for which the pilot in command is required to hold an airline transport pilot certificate a person must hold an airline transport pilot certificate and either:

(1) Have at least 3 years supervisory or managerial experience within the last 6 years in a position that exercised operational control over any operations conducted under part 121 or part 135 of this chapter; or

(2) In the case of a person becoming Director of Operations—

(i) For the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(ii) In the case of a person with previous experience as a Director of Operations, have at least 3 years experience, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(b) To serve as Director of Operations under § 119.69(a) for a certificate holder that only conducts operations for which the pilot in command is required to hold a commercial pilot certificate, a person must hold at least a commercial pilot certificate with an instrument rating and either:

(1) Have at least 3 years supervisory or managerial experience within the last 6 years in a position that exercised operational control over any operations conducted under part 121 of part 135 of this chapter or

(2) In the case of a person becoming Director of Operations—

(i) For the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(ii) In the case of a person with previous experience as a Director of Operations, have at least 3 years experience as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(c) To serve as Chief Pilot under § 119.69(a) for a certificate holder conducting any operation for which the pilot in command is requited to hold an airline transport pilot certificate a person must hold an airline pilot certificate with appropriate ratings and be qualified to serve as pilot in command in at least one aircraft used in the certificate holder's operation and:

(1) In the case of a person becoming a Chief Pilot for the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(2) In the case of a person with previous experience as a Chief Pilot, have at least 3 years experience as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(d) To serve as Chief Pilot under § 119.69(a) for a certificate holder that only conducts operations for which the pilot in command is required to hold a commercial pilot certificate, a person must hold at least a commercial pilot certificate with an instrument rating and be qualified to serve as pilot in command in at least one aircraft used in the certificate holder's operation and:

(1) In the case of a person becoming a Chief Pilot for the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(2) In the case of a person with previous experience as a Chief Pilot, have at least 3 years experience as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(e) To serve as Director of Maintenance under § 119.69(a) a person must hold a mechanic certificate with airframe and power plant ratings and either:

(1) Have 3 years of experience within the past 3 years maintaining aircraft as a certificated mechanic, including, at the time of appointment as Director of Maintenance, experience in maintaining the same category and class of aircraft as the certificate holder uses; or

(2) Have 3 years of experience within the past 3 years repairing aircraft in a certificated airframe repair station, including 1 year in the capacity of approving aircraft for return to service.

(f) The Manager of the Flight Standards Division in the region of the certificate-holding district office may authorize a certificate holder to employ a person who does not meet the appropriate airman, managerial, or supervisory experience requirements of this section if the Manager of the Flight Standards Regional Division finds that the person has comparable experience.

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

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

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

4. The heading for part 121 is revised to read as set forth above.

SFAR 38–2 [Removed]

5. Special Federal Aviation Regulation 38–2, Certification and Operating Requirements is removed.

6. Section 121.1 is revised to read as follows:

§ 121.1 Applicability.

This part prescribes rules governing—

(a) The domestic, flag, and supplemental operations of each person who is required to hold an Air Carrier Certificate or Operating Certificate under part 119 of this chapter.

(b) Each person employed or used by a certificate holder conducting operations under this part including maintenance, preventive maintenance, and alteration of aircraft.

(c) Each person who applies for provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum segment under SFAR No. 58, 14 CFR part 121, and each person employed or used by an air carrier or commercial operator under this part to perform training, qualification, or evaluation functions under an Advanced Qualification Program under SFAR No. 58.

(d) Nonstop sightseeing flights that begin and end at the same airport, and

are conducted within a 25 statute mile radius of that airport; however, these operations must comply only with §§ 121.455 and 121.457.

(e) Each person who is on board an aircraft being operated under this part.

(f) Each person who is an applicant for an Air Carrier Certificate or an Operating Certificate under part 119 of this chapter, when conducting proving tests.

7. Section 121.2 is added to read as follows:

§ 121.2 Compliance schedule for transition to part 121.

(a) *Applicability.* This section applies to the following:

(1) Each certificate holder that conducts scheduled passenger-carrying operations with airplanes having a passenger seating configuration of 10–30 seats and each certificate holder that conducts scheduled passenger-carrying operations in turbojet engine powered airplanes having a passenger seating configuration of 30 seats or fewer that before [Insert date 30 days after publication date of final rule] was issued an air carrier certificate or operating certificate and operations specifications under the certification requirements of part 135 of this chapter or under SFAR 38–2.

(2) Each person who after [Insert date 30 days after publication date of final rule] applies for or obtains an air carrier certificate or operating certificate or operations specifications to conduct operations described in paragraph (a) of this section.

(b) *Obtaining operations specifications.* Each person covered by paragraph (a)(1) of this section shall before [Insert date 1 year after publication date of final rule] obtain operations specifications to conduct its scheduled operations under part 121 of this chapter.

(c) *Regular or accelerated compliance.* Except as provided in paragraphs (d) and (e) of this section, each certificate holder covered by paragraph (a) of this section shall comply with each applicable requirement of part 121 of this chapter as of [Insert date 1 year after publication date of final rule] or the date on which the certificate holder is issued 14 CFR part 121 operations specifications, whichever occurs first.

(d) *Delayed retrofit requirements.* No certificate holder that is covered by paragraph (a) of this section may operate an airplane in 14 CFR part 121 operations on or after [Insert date 1 year after publication date of the final rule] unless that airplane meets the stated requirements:

(1) [2 years after publication date of final rule]:

(i) Section 121.289, Landing gear aural warning.

(ii) Section 121.293(a), Ditching emergency exits.

(iii) Section 121.308, Lavatory fire protection.

(iv) Section 121.310(c),(d), (e), and (h), Floor proximity lighting; emergency exit handle illumination, and interior and exterior emergency lighting, respectively.

(v) Section 121.312(c), Passenger seat cushion flammability.

(vi) Section 121.337(b), Protective breathing equipment.

(vii) Section 121.340, Floatation cushions.

(2) (4 years after publication date of final rule): Section 121.342, pitot heat indication system.

(e) *New manufacture requirements.* No certificate holder that is covered by paragraph (a) of this section may operate an airplane in 14 CFR part 121 operations that is and manufactured on or after the date stated on the certificate unless that airplane meets the stated requirements:

(1) (1 year after publication date of final rule): Section 121.311(f), Safety belts and shoulder harnesses.

(2) (4 years after publication date of final rule):

(i) Section 121.293(b), Takeoff warning system.

(ii) Section 121.312(a), Interior materials flammability.

(iii) Section 121.314, Cargo and baggage compartments.

(f) *New type certification requirements.* No person may operate an airplane for which the application for a type certificate was filed after [Insert date of publication of NPRM] in 14 CFR part 121 operations unless that airplane is type certificated under part 25 of this chapter.

(g) *Transition plan.* Before [Insert date 60 days after publication date of final rule] each certificate holder described in paragraph (a)(1) of this section must submit to the FAA a transition plan (containing a calendar of events) for moving from conducting its scheduled operations under the commuter requirements of part 135 of this chapter to the requirements for domestic or flag operations under this part. Each transition plan must contain details on the following:

(1) Plans for obtaining new operations specifications authorizing domestic or flag operations;

(2) Plans for being in compliance with the applicable requirements of this part on or before [Insert date 1 year after the publication date of the final rule]; and

(3) Plans for complying with the compliance date schedules contained in paragraphs (d) and (e) of this section.

§§ 121.3, 121.5, 121.7, 121.9, and 121.13 [Removed]

8. Sections 121.3, 121.5, 121.7, 121.9, and 121.13 are removed.

§ 121.4 [Amended]

9. Section 121.4 is amended by removing "§ 121.3" wherever it appears and adding in its place "part 119 of this chapter".

10. Section 121.15 is revised to read as follows:

§ 121.15 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

If a certificate holder operating under this part permits any aircraft owned or leased by that holder to be engaged in any operation that the certificate holder knows to be in violation of § 91.19(a) of this chapter, that operation is a basis for suspending or revoking the certificate

Subpart B—[Removed and Reserved]

11. Subpart B (Sections 121.21 through 121.29) is removed, and the subpart heading is reserved.

Subpart C—[Removed and Reserved]

12. Subpart C (§§ 121.41 through 121.61) is removed and the subpart heading is reserved.

Subpart D—[Removed and Reserved]

13. Subpart D (§§ 121.71 through 121.83) is removed and the subpart heading is reserved.

14. Section 121.141 is amended by revising the section heading, paragraph (a), and the introductory text of paragraph (b) to read as follows:

§ 121.141 Airplane flight manual.

(a) Each certificate holder shall keep a current approved airplane flight manual for each type of aircraft that it operates except for nontransport category airplanes certificated before January 1, 1965.

(b) In each airplane identified in paragraph (a) of this section, the certificate holder shall carry either the manual required by § 121.133, if it contains the information required for the applicable flight manual and this information is clearly identified as flight manual requirements, or an approved Airplane Manual. If the certificate holder elects to carry the manual required by § 121.133, he may revise the operating procedures sections and modify the presentation of performance data from the applicable flight manual if the revised operating procedures and

modified performance date presentation are—

* * * * *

15. Section 121.157 is amended by revising paragraphs (b) and (e) and by adding a new paragraph (f) to read as follows:

§ 121.157 Aircraft certification and equipment requirements.

* * * * *

(b) *Airplanes certificated after June 30, 1942.* Except as provided in paragraphs (c), (d), (e), and (f) of this section, no certificate holder may operate an airplane that was type certificated after June 30, 1942, unless it is certificated as a transport category airplane and meets the requirements of § 121.173(a), (b), (d), and (e).

* * * * *

(e) *Commuter category and predecessor airplanes.* Except as provided in paragraphs (c) and (d) of this section, no certificate holder may operate a nontransport category airplane type certificated after December 31, 1964, under this part, unless it meets the applicable requirements of § 121.173(a), (b), (d), and (e) and was type certificated in the commuter category or meets one of the following requirements:

(1) The airplane was type certificated in the normal category before July 1, 1970, and meets special conditions issued by the Administrator for airplanes intended for use in operations under part 135 of this chapter.

(2) The airplane was type certificated in the normal category before July 19, 1970, and meets the additional airworthiness standards in SFAR No. 23, 14 CFR part 23.

(3) The airplane was type certificated in the normal category and meets the additional airworthiness standards in appendix A of part 135 of this chapter.

(4) The airplane was type certificated in the normal category and complies with either section 1.(a) or 1.(b) of SFAR No. 41, 14 CFR part 21.

(f) *Newly type certificated airplanes.* No person may operate an airplane for which the application for a type certificate is submitted after [Insert publication date of NPRM] unless the airplane is type certificated under part 25 of this chapter.

16. Section 121.159 is revised to read as follows:

§ 121.159 Single-engine airplanes prohibited.

No certificate holder may operate a single-engine airplane under this part.

17 Section 121.163 is amended by revising paragraphs (a), (b), and (c) and the introductory text of paragraph (d) to read as follows:

§ 121.163 Airplane proving tests.

(a) *Initial airplane proving tests.* No person may operate an airplane not before proven for use in a kind of operation under this part unless an airplane of that type has had, in addition to the airplane certification tests, at least 100 hours of proving tests acceptable to the Administrator, including a representative number of flights into en route airports. The requirement for at least 100 hours of proving tests may be reduced by the Administrator if the Administrator determines that a satisfactory level of proficiency has been demonstrated to justify the reduction. At least 10 hours of proving flights must be flown at night; these tests are irreducible.

(b) *Proving tests for kinds of operations.* Unless otherwise authorized by the Administrator, for each type of airplane, a certificate holder must conduct at least 50 hours of proving tests acceptable to the Administrator for each kind of operation it intends to conduct, including a representative number of flights into en route airports.

(c) *Proving tests for materially altered airplanes.* Unless otherwise authorized by the Administrator, for each type of airplane that is materially altered in design, a certificate holder must conduct at least 50 hours of proving tests acceptable to the Administrator for each kind of operation it intends to conduct with that airplane, including a representative number of flights into en route airports.

(d) *Definition of materially altered.* For the purposes of paragraph (c) of this section, a type of airplane is considered to be materially altered in design if the alterations include—

* * * * *

18. Subpart I is amended by removing the words "transport category" wherever they appear.

18A. Paragraphs (a) through (e) of § 121.173 are revised to read as follows:

§ 121.173 General.

(a) Except as provided in paragraph (c) of this section, each certificate holder operating a reciprocating-engine-powered airplane shall comply with §§ 121.175 through 121.187.

(b) Except as provided in paragraph (c) of this section, each certificate holder operating a turbine-engine-powered airplane shall comply with the applicable provisions of §§ 121.189 through 121.197, except that when it operates a turbo-propeller-powered airplane type certificated after August 29, 1959, but previously type certificated with the same number of reciprocating engines, it may comply with §§ 121.175 through 121.187.

(c) Each certificate holder operating a large nontransport category airplane type certificated before January 1, 1965, shall comply with §§ 121.199 through 121.205 and any determination of compliance must be based only on approved performance data.

(d) The performance data in the Airplane Flight Manual applies in determining compliance with §§ 121.175 through 121.197. Where conditions are different from those on which the performance data is based, compliance is determined by interpolation or by computing the effects of changes in the specific variables if the results of the interpolation or computations are substantially as accurate as the results of direct tests.

(e) Except as provided in paragraph (c) of this section, no person may take off a reciprocating engine powered airplane at a weight that is more than the allowable weight for the runway being used (determined under the runway takeoff limitations of the transport category operating rules of 14 CFR part 121, subpart I) after taking into account the temperature operating correction factors in the applicable Airplane Flight Manual.

* * * * *

19. Section 121.175 is amended by revising the section heading and adding a new paragraph (f) to read as follows:

§ 121.175 Airplanes: Reciprocating engine powered: Weight limitations.

* * * * *

(f) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

20. Section 121.177 is amended by revising the section heading and adding a new paragraph (c) to read as follows:

§ 121.177 Airplanes: Reciprocating engine powered: Takeoff limitations.

* * * * *

(c) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

21. Section 121.179 is amended by revising the section heading and adding a new paragraph (c) to read as follows:

§ 121.179 Airplanes: Reciprocating engine powered: En route limitations: all engines operating.

* * * * *

(c) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

22. Section 121.181 is amended by revising the section heading and adding a new paragraph (d) to read as follows:

§ 121.181 Airplanes: Reciprocating engine powered: En route limitations: One engine inoperative.

* * * * *

(d) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

23. Section 121.185 is amended by revising the section heading and adding a new paragraph (c) to read as follows:

§ 121.185 Airplanes: Reciprocating engine powered: Landing limitations: Destination airport.

* * * * *

(c) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

24. Section 121.187 is amended by revising the section heading, designating the existing text as paragraph (a), and by adding a new paragraph (b) to read as follows:

§ 121.187 Airplanes: Reciprocating engine powered: Landing limitations: Alternate airport.

* * * * *

(b) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

25. Section 121.211 is revised to read as follows:

§ 121.211 Applicability.

(a) This subpart prescribes special airworthiness requirements applicable to certificate holders as stated in paragraphs (b) through (e) of this section.

(b) Except as provided in paragraph (d) of this section, each airplane type certificated under Aero Bulletin 7A or part 4 of the Civil Air Regulations in effect before November 1, 1946 must meet the special airworthiness requirements in §§ 121.215 through 121.283.

(c) Each certificate holder must comply with the requirements of §§ 121.285 through 121.291.

(d) If the Administrator determines that, for a particular model of airplane used in cargo service, literal compliance with any requirement under paragraph (b) of this section would be extremely difficult and that compliance would not contribute materially to the objective sought, he may require compliance only with those requirements that are necessary to accomplish the basic objectives of this part.

(e) No person may operate under this part a nontransport category airplane type certificated after December 31, 1964 unless the airplane meets the special airworthiness requirements in § 121.293.

§ 121.213 [Removed and Reserved]

26. Section 121.213 is removed and reserved.

27. Section 121.285 is amended by revising paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 121.285 Carriage of cargo in passenger cargo compartments.

(a) Except as provided in paragraph (b), (c), or (d) or this section, no certificate holder may carry cargo in the passenger compartment of an airplane.

* * * * *

(d) Cargo may be carried anywhere in the passenger compartment of a nontransport category airplane type certificated after December 31, 1964, in an approved cargo rack, bin, or compartment installed in or on the airplane or if it is carried in accordance with paragraphs (c)(1) through (c)(5) of this section.

§ 121.289 [Amended]

28. Section 121.289(a) introductory text is amended by removing the word "large."

29. Section 121.291 is amended by revising the introductory text of paragraph (b) and the introductory text of paragraph (c) to read as follows:

§ 121.291 Demonstration of emergency evacuation procedures.

* * * * *

(b) Each certificate holder conducting operations with airplanes with a seating capacity of more than 44 passengers must conduct a partial demonstration of emergency evacuation procedures in accordance with paragraph (c) of this section upon:

* * * * *

(c) In conducting the partial demonstration required by paragraph (b) of this section, each certificate holder must:

* * * * *

30. A new § 121.293 is added to read as follows:

§ 121.293 Special airworthiness requirements for nontransport category airplanes type certificated after December 31, 1964.

(a) No person may operate a nontransport category airplane type certificated after December 31, 1964, unless the airplane meets the requirements for ditching emergency exits in § 23.807(e) of this chapter.

(b) No certificate holder may operate a nontransport category airplane manufactured after [Insert date 4 years after publication date of final rule] unless the airplane contains a takeoff warning system that meets the requirements of § 25.703. However, the takeoff warning system does not have to cover any device for which it can be demonstrated that takeoff with that device in the most adverse position would not create a hazardous condition.

§ 121.308 [Amended]

31. Section 121.308 is amended by removing the words "transport category" in paragraphs (a) and (b).

32. Section 121.309 is amended by revising paragraphs (c)(7), (d)(1), and (e) to read as follows:

§ 121.309 Emergency equipment.

* * * * *

(c) * * *

(7) At least two of the required hand fire extinguisher installed in passenger-carrying airplanes must contain Halon 1211 (bromochlorofluoromethane) or equivalent as the extinguishing agent. At least one hand fire extinguisher in the passenger compartment must contain Halon 1211 or equivalent.

* * * * *

(d) *First aid and emergency medical equipment and protective gloves.* (1) For treatment of injuries or medical emergencies that might occur during flight time or in minor accidents each passenger-carrying airplane must have the following equipment that meets the specifications and requirements of appendix A of this part:

(i) Approved first aid kits and

(ii) For airplanes requiring a flight attendant, an emergency medical kit.

* * * * *

(e) *Crash ax.* Each airplane with a separate flight deck and lockable door must be equipped with a crash ax.

* * * * *

33. Section 121.310 is amended by revising paragraph (d)(2)(i) and paragraph (f) introductory text to read as follows:

§ 121.310 Additional emergency equipment.

* * * * *

(d) * * *

(2) * * *

(i) Be operable manually both from the flight crew station and, for airplanes on which a flight attendant is required from a point in the passenger compartment that is readily accessible to a normal flight attendant seat.

(f) *Emergency exit access.* Except for nontransport category airplanes certificated after December 31, 1964 access to emergency exits must be provided as follows for each passenger-carrying airplane:

* * * * *

34. Section 121.312 is amended by adding the words "transport category" before the word "airplanes" in

paragraph (b) and by adding a new paragraph (c) to read as follows:

§ 121.312 Materials for compartment interiors.

* * * * *

(c) For nontransport category airplanes type certificated after December 31, 1964, after [Insert date 2 years after effective date of final rule] or after the seat cushion is replaced, whichever occurs first, each seat cushion, except those on flight crewmember seats, in any compartment occupied by crew or passengers must comply with the requirements pertaining to fire protection of seat cushions in § 25.853(c) of this chapter, effective November 26, 1984, and appendix F to part 25 of this chapter, effective November 26, 1984. The Administrator may grant a deviation from this requirement for up to an additional 2 years if he finds that it is justified by an integral-seat cushion configuration.

35. Section 121.313(f) is revised to read as follows:

§ 121.313 Miscellaneous equipment.

* * * * *

(f) A door between the passenger and pilot compartments, with a locking means to prevent passengers from opening it without the pilot's permission, except that nontransport category airplanes certificated after December 31, 1964, without a door are not required to comply with this paragraph.

* * * * *

36. Section 121.337 is amended by removing the words "transport category" from the introductory text in paragraph (b) and by revising paragraph (b)(9)(iv) to read as follows:

§ 121.337 Protective breathing equipment.

* * * * *

(b) * * *

(9) * * *

(iv) Except airplanes having a passenger-seating configuration of fewer than 20 passenger seats, excluding any required crewmember seat, and a payload capacity of 7,500 pounds or less, in each passenger compartment, one located within 3 feet of each hand fire extinguisher required by § 121.309, except that the Administrator may authorize a deviation allowing locations of PBE more than 3 feet from required hand fire extinguisher locations if special circumstances exist that make compliance impractical and the proposed deviation provides an equivalent level of safety.

* * * * *

37. Section 121.340 is amended by revising paragraph (a) to read as follows:

§ 121.340 Emergency flotation means.

(a) Except as provided in paragraph (b) of this section, no person may operate an airplane in any overwater operation unless it is equipped with life preservers in accordance with § 121.339(a)(1) or with an approved flotation means for each occupant. This means must be within easy reach of each seated occupant and must be readily removable from the airplane.

* * * * *

§ 121.342 [Amended]

38. Section 121.342 is amended by adding the words "or a nontransport category airplane type certificated after December 31, 1964, "after the word "airplane" in paragraph (a).

§ 121.343 [Amended]

39. Section 121.343 is amended by revising the section heading to read "Flight recorders: Airplanes with a payload capacity of more than 7,500 pounds."

40. Section 121.344 is added to read as follows:

§ 121.344 Flight recorders: Airplanes with a payload capacity of 7,500 pounds or less.

No person may operate an airplane with a payload capacity of 7,500 pounds or less unless it meets the requirements for flight recorders in § 135.152 of this chapter.

41. Section 121.356 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 121.356 Traffic Alert and Collision Avoidance System.

* * * * *

(c) The appropriate manuals required by § 121.131 shall contain the following information on the TCAS II System or TCAS I System, as appropriate, as required by this section:

* * * * *

41. Section 121.357 is amended by revising paragraph (a) and introductory text of paragraph (c) to read as follows:

§ 121.357 Airborne weather radar equipment requirements.

(a) No person may operate any airplane (except C–46 type airplanes) unless approved airborne weather radar equipment has been installed in the airplane.

* * * * *

(c) Each person operating an airplane required to have approved airborne weather radar equipment installed shall, when using it under this part, operate it in accordance with the following:

* * * * *

42. Section 121.359 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 121.359 Cockpit voice recorders.

(a) No certificate holder may operate a turbine-powered airplane or a large pressurized airplane with four reciprocating engines unless an approved cockpit voice recorder is installed in that airplane and is operated continuously from the start of the use of the checklist (before starting engines for the purpose of flight) to completion of the final checklist at the termination of the flight.

(b) The cockpit voice recorder required by this section for a turbine-powered airplane having a passenger seating configuration of 10 to 19 seats and a maximum payload capacity of 7,500 pounds or less must comply with the following application standards: § 23.1457(a)(1) and (2), (b), (c), (d), (e), (f), and (g); or § 25.1457(a)(1) and (2), (b), (c), (d), (e), (f), and (g) of this chapter, as applicable.

(c) Except as provided in paragraph (b), the cockpit voice recorder required by this section must meet the following application standards:

(1) The requirements of § 25.1457 of this chapter.

(2) Each recorder container must—

(i) Be either bright orange or bright yellow;

(ii) Have reflective tape affixed to the external surface to facilitate its location under water; and

(iii) Have an approved underwater locating device on or adjacent to the container which is secured in such a manner that they are not likely to be separated during crash impact, unless the cockpit voice recorder, and the flight recorder required by § 121.343, are installed adjacent to each other in such a manner that they are not likely to be separated during crash impact.

* * * * *

43. Section 121.380 is amended by revising paragraphs (a) introductory text, (a)(2)(i), (a)(2)(ii), (a)(2)(v), (a)(2)(vi), (b)(1), and (b)(2) to read as follows:

§ 121.380 Maintenance recording requirements.

(a) Each certificate holder shall keep (using the system specified in the manual required in § 121.369) the following records for the periods specified in paragraph (b) of this section:

* * * * *

(2) * * *

(i) The total time in service of the airframe, engine, and propeller.

(ii) The current status of life-limited parts of each airframe, engine, propeller, and appliance.

* * * * *

(v) The current status of applicable airworthiness directives, including the date and methods of compliance, and, if the airworthiness directive involves recurring action, the time and date when the next action is required.

(vi) A list of current major alterations to each airframe, engine, propeller, and appliance.

(b) * * *

(1) Except for the records of the last complete overhaul of each airframe, engine, propeller, and appliance, the records specified in paragraph (a)(1) of this section shall be retained until the work is repeated or superseded by other work or for one year after the work is performed.

(2) The records of the last complete overhaul of each airframe, engine, propeller, and appliance shall be retained until the work is superseded by work of equivalent scope and detail.

* * * * *

44. Section 121.391 is amended by redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4), respectively; by revising paragraphs (a) introductory text and (a)(1); by adding a new paragraph (a)(2); and by removing paragraph (e) to read as follows:

§ 121.391 Flight attendants.

(a) Each certificate holder shall provide at least the following flight attendants on each passenger-carrying airplane used:

(1) For airplanes having a maximum payload capacity of more than 7,500 pounds and having a seating capacity of more than 9 but less than 51 passengers—one flight attendant.

(2) For airplanes having a maximum payload capacity of 7,500 pounds or less and having a seating capacity of more than 19 but less than 51 passengers—one flight attendant.

* * * * *

45. Section 121.393 is added to read as follows:

§ 121.393 Crewmember requirements at stops where passengers remain on board.

At stops where passengers remain on board, the certificate holder must meet the following requirements:

(a) Certificate holders who are not required to use a flight attendant under § 121.391(a) must have on board a person who is qualified in the emergency evacuation procedures for that aircraft as required in § 121.417. That person must be identified to the passengers.

(b) If flight attendants are required, but the number of flight attendants remaining on board is fewer than required by § 121.391(a), the certificate holder must meet the following requirements:

(1) The certificate holder must ensure that the airplane's engines are shut down and at least one floor-level exit remains open to provide for passenger deplaning.

(2) The number of flight attendants on board must be at least half the number required by § 121.391(a), rounded down to the next lower number in the case of fractions, but never fewer than one.

(3) The certificate holder may substitute for the required flight attendants other persons qualified in the emergency evacuation procedures for that aircraft as required in § 121.417, if these persons are identified to the passengers.

(c) If only one flight attendant or other qualified person is on board during a stop, that flight attendant or other qualified person shall be located in accordance with the certificate holder's FAA-approved operating procedures. If more than one flight attendant or other qualified person is on board, the flight attendants or other qualified persons shall be spaced throughout the cabin to provide the most effective assistance for the evacuation in case of an emergency.

§ 121.435 [Removed]

46. Section 121.435 is removed.

47. Section 121.463 is amended by revising paragraphs (a)(2) and (c) to read as follows:

§ 121.463 Aircraft dispatcher qualifications.

(a) * * *

(2) Operating familiarization consisting of at least 5 hours observing operations under this part from the flight deck or, for airplanes without an observer seat on the flight deck, from a forward passenger seat with headset or speaker. This requirement may be reduced to a minimum of 2½ hours by the substitution of one additional takeoff and landing for an hour of flight. A person may serve as an aircraft dispatcher without meeting the requirement of this paragraph (a) for 90 days after initial introduction of the airplane into operations under this part.

* * * * *

(c) No certificate holder conducting domestic or flag operations may use any person, nor may any person serve, as an aircraft dispatcher unless within the preceding 12 calendar months the aircraft dispatcher has satisfactorily completed operating familiarization consisting of at least 5 hours observing operations under this part, in one of the types of airplanes in each group to be dispatched. This observation shall be made from the flight deck or, for airplanes without an observer seat on the flight deck, from a forward passenger seat with headset or speaker. The requirement of this paragraph (a) may be reduced to a minimum of 2½ hours by the substitution of one additional takeoff and landing for an hour of flight. The requirement of this paragraph (a) may be satisfied by observation of 5 hours of simulator training for each airplane group in one of the simulators approved under § 121.407 for the group. However, if the requirement of this paragraph (a) is met by the use of a simulator, no reduction in hours is permitted.

* * * * *

§§ 121.557 and 121.559 [Removed]

48. Sections 121.557 and 121.559 are removed.

49. Section 121.571 is amended by adding a new paragraph (a)(1)(v) and by revising the introductory text of paragraph (a)(3) to read as follows:

§ 121.571 Briefing passengers before takeoff.

(a) * * *

(1) * * *

(v) On operations that do not use a flight attendant, the following additional information:

(A) The placement of seat backs in an upright position before takeoff and landing.

(B) Location of survival equipment.

(C) If the flight involves operations above 12,000 MSL, the normal and emergency use of oxygen.

(D) Location and operation of fire extinguisher.

* * * * *

(3) Except as provided in paragraph (a)(4) of this section, before each takeoff a required crewmember assigned to the flight shall conduct an individual briefing of each person who may need the assistance of another person to move expeditiously to an exit in the event of an emergency. In the briefing the required crewmember shall—

* * * * *

50. Section 121.578(b) introductory text is revised to read as follows:

§ 121.578 Cabin ozone concentration.

* * * * *

(b) Except as provided in paragraphs (d) and (e) of this section, no certificate holder may operate an airplane above the following flight levels unless it is successfully demonstrated to the Administrator that the concentration of ozone inside the cabin will not exceed—

* * * * *

51. Section 121.581 is amended by revising paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 121.581 Forward observer's seat: En route inspections.

(a) Except as provided in paragraph (c) of this section, each certificate holder shall make available a seat on the flight deck of each airplane, used by it in air commerce, for occupancy by the Administrator while conducting en route inspections. The location and equipment of the seat, with respect to its suitability for use in conducting en route inspections, is determined by the Administrator.

* * * * *

(c) For any airplane that does not have an observer seat on the flight deck, the certificate holder must provide a forward passenger seat with headset or speaker for occupancy by the Administrator while conducting en route inspections.

§ 121.583 [Amended]

52. Section 121.583(a) is amended by removing the reference to ",121.161,."

53. Section 121.590 is amended by revising paragraph (a) and (b) to read as follows: paragraph (b) to read as follows:

§ 121.590 Use of certificated land airports.

(a) Except as provided in paragraph (b) of this section or unless otherwise authorized by the Administrator, no air carrier, and no pilot being used by an air carrier may, in the conduct of operations governed by this part, operate an aircraft into a land airport in any State of the United States, the District of Columbia, or any territory or possession of the United States, unless that airport is certificated under part 139 of this chapter. However, an air carrier may designate and use as a required alternate airport for departure or destination an airport that is not certificated under part 139 of this chapter.

(b) Certificate holders conducting passenger-carrying operations with airplanes designed for less than 31 passenger seats may operate those airplanes into airports not certificated under part 139 of this chapter if the following conditions are met:

(1) The airport is adequate for the proposed operation, considering such items as size, surface, obstructions, and lighting.

(2) For an airplane carrying passengers at night, the pilot may not take off from, or land at, an airport unless—

(i) The pilot has determined the wind direction from an illuminated wind direction indicator or local ground communications or, in the case of takeoff, that pilot's personal observations; and

(ii) The limits of the area to be used for landing or takeoff are clearly shown by boundary or runway marker lights. If the area to be used for takeoff or landing is marked by flare pots or lanterns, their use must be approved by the Administrator.

54. Section 121.703 is amended by revising paragraphs (a)(12) and (f) to read as follows:

§ 121.703 Mechanical reliability reports.

(a) * * *

(12) An unwanted landing gear extension or retraction, or an unwanted opening or closing of landing gear doors during flight;

* * * * *

(f) A certificate holder that is also the holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval, or a Technical Standard Order Authorization, or that is the licensee of a type certificate holder, need not report a failure, malfunction, or defect under this section if the failure, malfunction, or defect has been reported by it under § 21.3 of this chapter or under the accident reporting provisions of 14 CFR part 830.

* * * * *

55. Section 121.713 is revised to read as follows:

§ 121.713 Retention of contracts and amendments: Commercial operatorsho conduct intrastate operations for compensation or hire.

(a) Each commercial operator who conducts intrastate operations for compensation or hire shall keep a copy of each written contract under which it provides services as a commercial operator for a period of at least 1 year after the date of execution of the contract. In the case of an oral contract, it shall keep a memorandum stating its elements, and of any amendments to it, for a period of at least one year after the execution of that contract or change.

(b) Each commercial operator who conducts intrastate operations for compensation or hire shall submit a financial report for the first 6 months of each fiscal year and another financial report for each complete fiscal year. If that person's operating certificate is suspended for more than 29 days, that person 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 § 119.35(h)(2), (h)(7), and (h)(8) of this chapter;

(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 the separation of items relating to the 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.

55A. The title for 14 CFR part 125 is revised to read as follows:

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

56. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101 40102, 40103, 40113, 44105, 44106, 44111 44701–44717, 44722, 44901, 44903, 44904 44906, 44912, 44914, 44936, 44938, 46103 46105.

57. Paragraph (b)(4) of § 125.1 is revised to read as follows:

§ 125.1 Applicability.

* * * * *

(b) * * *

(4) They are being operated under part 91 by an operator certificated to operate those airplanes under the rules of part 121, 135, or 137 of this chapter, they are being operated under the applicable rules of part 121 or part 135 of this chapter by an applicant for a certificate under part 119 of this chapter or they are being operated by a foreign air carrier or a foreign person engaged in common carriage solely outside the United States under part 91 of this chapter; or

* * * * *

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

58. Part 127 is removed.

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

59. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

60. The heading for part 135 is revised to read as set forth above.

61. Section 135.1 is revised to read as follows:

§ 135.1 Applicability.

(a) This part prescribes rules governing—

(1) The commuter or on-demand operations of each person who is required to hold an Air Carrier Certificate or Operating Certificate under part 119 of this chapter.

(2) Each person employed or used by a certificate holder conducting operations under this part including the maintenance, preventative maintenance and alteration of an aircraft.

(3) The transportation of mail by aircraft conducted under a postal service contract awarded under 39 U.S.C. 5402c.

(4) Each person who applies for provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum segment under SFAR No. 58 and each person employed or used by an air carrier or commercial operator under this part to perform training, qualification, or evaluation functions under an Advanced Qualification Program under SFAR No. 58.

(5) Nonstop sightseeing flights for compensation or hire that begin and end at the same airport, and are conducted within a 25 statute mile radius of that airport; however, these operations must comply only with §§ 135.249, 135.251, 135.253, 135.255, and 135.353.

(6) Each person who is on board an aircraft being operated under this part.

(7) Each person who is an applicant for an Air Carrier Certificate or an Operating Certificate under 119 of this chapter, when conducting proving tests.

62. Section 135.2 is revised to read as follows:

§ 135.2 Compliance schedule for transition to part 121.

(a) *Applicability.* This section applies to the following:

(1) Each certificate holder that conducts scheduled passenger-carrying operations with airplanes having a passenger seating configuration of 10 to 30 seats and each certificate holder that conducts scheduled passenger-carrying operations in turbojet engine powered airplanes having a passenger seating configuration of 30 seats or fewer that before [Insert date 30 days after publication date of final rule] was issued an air carrier certificate or operating certificate and operations specifications under the certification requirements of part 135 of this chapter or under SFAR 38–2.

(2) Each person who after [Insert date 30 days after publication date of final rule] applies for or obtains an air carrier certificate or operating certificate or operations specifications to conduct operations described in paragraph (a) of this section.

(b) *Obtaining operations specifications.* Each person covered by paragraph (a)(1) of this section shall before [Insert date 1 year after publication date of final rule] obtain operations specifications to conduct its scheduled operations under part 121 of this chapter.

(c) *Regular or accelerated compliance.* Except as provided in paragraphs (d) and (e) of this section, each certificate holder covered by paragraph (a) of this section shall comply with each applicable requirement of part 121 of this chapter as of [Insert date 1 year after publication date of final rule] or the date on which the certificate holder is issued 14 CFR part 121 operations specifications, whichever occurs first.

(d) *Delayed retrofit requirements.* No certificate holder that is covered by paragraph (a) of this section may operate an airplane in 14 CFR part 121 operations on or after the date stated on the certificate unless that airplane meets the stated requirements:

(1) [2 years after publication date of final rule]

(i) Section 121.289, Landing gear aural warning.

(ii) Section 121.293(a), Ditching emergency exits.

(iii) Section 121.308, Lavatory fire protection.

(iv) Section 121.310 (c), (d), (e), and (h), Floor proximity lighting; emergency exit handle illumination, and interior and exterior emergency lighting, respectively.

(v) Section 121.312(c), Passenger seat cushion flammability.

(vi) Section 121.337(b), Protective breathing equipment.

(vii) Section 121.340, Floatation cushions.

(2) [4 years after publication date of final rule]: Section 121.342, pitot heat indication system.

(e) *New manufacture requirements.* No certificate holder that is covered by paragraph (a) of this section may operate an airplane in 14 CFR part 121 operations that is and manufactured on or after the date stated on the certificate unless that airplane meets the stated requirements:

(1) [1 year after publication date of final rule]: Section 121.311(f), Safety belts and shoulder harnesses.

(2) [4 years after publication date of final rule]:

(i) Section 121.293(b), Takeoff warning system.

(ii) Section 121.312(a), Interior materials flammability.

(iii) Section 121.314, Cargo and baggage compartments.

(f) *New type certification requirements.* No person may operate an airplane for which the application for a type certificate was filed after [Insert date of publication of NPRM] in 14 CFR part 121 operations unless that airplane is type certificated under part 25 of this chapter.

(g) *Transition plan.* Before [Insert date 60 days after publication of final rule] each certificate holder described in paragraph (a)(1) of this section must submit to the FAA a transition plan (containing a calendar of events) for moving from conducting its scheduled operations under the commuter requirements of part 135 of this chapter to the requirements for domestic or flag operations under part 121 of this chapter. Each transition plan must contain details on the following:

(1) Plans for obtaining new operations specifications authorizing domestic or flag operations;

(2) Plans for being in compliance with the applicable requirements of part 121 of this chapter on or before [Insert date 1 year after the publication date of the final rule].

(3) Plans for complying with the compliance date schedules contained in paragraphs (d) and (e) of this section

§§ 135.5, 135.9, 135.11, 135.13, 135.15, 135.17, and 135.19 [Removed]

63. Sections 135.5, 135.9, 135.11, 135.13, 135.15, 135.17, and 135.19 are removed.

§ 135.7 [Amended]

64. Section 135.7 is amended by removing "§ 135.5" wherever it appears and adding in its place "part 119 of this chapter"

§ 135.21 [Amended]

65. Section 135.21 (b) and (f) are amended by revising "principal operations base" to read "principal base of operations."

§ 135.23 [Amended]

66. Section 135.23(a) is amended by removing the reference "§ 135.37(a)" and adding in its place "§ 119.69(a) of this chapter"

§ 135.27, 135.29, 135.31, 135.33, 135.35, 135.37, and 135.39 [Removed]

67. Section 135.27, 135.29, 135.31, 135.33, 135.35, 135.37, and 135.39 are removed.

68. Section 135.41 is revised to read as follows:

§ 135.41 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

If the holder of a certificate operating under this part allows any aircraft owned or leased by that holder to be engaged in any operation that the certificate holder knows to be in violation of § 91.19(a) of this chapter, that operation is a basis for suspending or revoking the certificate.

§ 135.43 [Amended]

69. Section 135.43 is amended by:

(A) Revising "FAA Flight Standards District Office charged with the overall inspection" in paragraph (b) to read " certificate-holding district office."

(B) Revising "Flight Standards District Office" in paragraph (c) to read "certificate-holding district office."

70. Section 135.64 is added to read as follows:

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

(a) Each commercial operator who conducts intrastate operations for compensation or hire shall keep a copy of each written contract under which it provides services as a commercial operator for a period of at least one year after the date of execution of the contract. In the case of an oral contract, it shall keep a memorandum stating its elements, and of any amendments to it, for a period of at least one year after the execution of that contract or change.

(b) Each commercial operator who conducts intrastate operations for compensation or hire shall submit a financial report for the first 6 months of each fiscal year and another financial report for each complete fiscal year. If that person's operating certificate is suspended for more than 29 days, that person 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 § 119.35(h)(2), (h)(7), and (h)(8) of this chapter;

(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 the separation of items relating to the 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.

§ 135.105 [Amended]

71. Section 135.105(a) is amended by revising the phrase "by a Commuter Air Carrier (as defined in § 298.2 of this title) in passenger-carrying operations" to read "in a commuter operation, as defined in part 119 of this chapter."

§ 135.145 [Amended]

72. Section 135.145 is amended by revising the words "certificate holder or applicant for an air carrier or operating certificate" in paragraphs (a) and (b) to read "certificate holder", wherever they appear.

§ 135.165 [Amended]

73. Section 135.165(a) is amended by revising the phrase "carrying passengers as a *Commuter Air Carrier*" as defined in part 298 of this title," to read "in a commuter operation, as defined in part 119 of this chapter."

74. Section 135.243(a) is revised to read as follows:

§ 135.243 Pilot in command qualifications.

(a) No certificate holder may use a person, nor may any person serve, as pilot in command in passenger-carrying operations—

(1) Of a turbojet airplane, of an airplane having a passenger-seating configuration, excluding any pilot seat, of 10 seats or more, or of a multiengine airplane in a commuter operation as defined in part 119 of this chapter, unless that person holds an airline transport pilot certificate with appropriate category and class ratings and, if required, an appropriate type rating for that airplane.

(2) Of a helicopter in a scheduled interstate air transportation operation by an air carrier within the 48 contiguous states unless that person holds an airline transport pilot certificate, appropriate type ratings, and an instrument rating.

* * * * *

§ 135.244 [Amended]

75. Section 135.244(a) is amended by revising the phrase "by a Commuter Air Carrier (as defined in § 298.2 of this title) in passenger-carrying operations" to read "in a commuter operation, as defined in part 119 of this chapter."

76. Section 135.248 is added to read as follows:

§ 135.248 Use of maintenance personnel.

Notwithstanding the provisions of §§ 135.249, 135.251, 135.253, and 135.255, an operator who does not hold an air carrier or operating certificate is permitted to use a person, who is otherwise authorized to perform aircraft maintenance or preventive maintenance duties and who is not subject to the requirements of an FAA-approved anti-drug program, to perform—

(a) Aircraft maintenance or preventive maintenance on the operator's aircraft if the operator would be required to transport the aircraft more than 50 nautical miles further than the closest available repair point from the operator's principal place of operations to obtain these services; or

(b) Emergency repairs on the operator's aircraft if the aircraft cannot be safely operated to a location where an employee subject to the requirements of appendix I of part 121 of this chapter can perform the emergency repairs.

77. Section 135.352 is added to read as follows:

§ 135.352 Use of maintenance personnel.

Notwithstanding the provisions of § 135.353, an operator who does not hold an air carrier or operating certificate is permitted to use a person, who is otherwise authorized to perform aircraft maintenance or preventive maintenance duties and who is not subject to the requirements of an FAA-approved anti-drug program, to perform—

(a) Aircraft maintenance or preventive maintenance on the operator's aircraft if the operator would be required to transport the aircraft more than 50 nautical miles further than the closest available repair point from the operator's principal place of operations to obtain these services; or

(b) Emergency repairs on the operator's aircraft if the aircraft cannot be safely operated to a location where an employee subject to the requirements of appendix I of part 121 of this chapter can perform the emergency repairs.

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Anthony J. Broderick,

Associate Administrator for Regulation and Certification.

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