

[Docket No. 13228; Amdt. No. 139-3]

PART 139—CERTIFICATION AND OPERATIONS: LAND AIRPORTS SERVING CAB-CERTIFICATED AIR CARRIERS

Airports and Heliports Unscheduled Operations with Small Aircraft Extension of Reporting Dates

The purpose of this amendment to § 139.12 of Part 139 of the Federal Aviation Regulations is to extend from October 5, 1973, to December 15, 1973, the time within which persons who on May 20, 1973, were operating an airport or heliport serving a CAB-certificated air carrier conducting only unscheduled operations or operations with small aircraft may apply for an extension of their airport operating certificate, and to extend the time for submitting a schedule of compliance showing how compliance with the requirements of Part 139 will be achieved.

Part 139 of the Federal Regulations provides for the issuance of airport operating certificates for land airports serving CAB-certificated air carriers. As originally adopted, Part 139 was applicable only to land airports serving "scheduled" air carriers operating large aircraft (other than helicopters). Amendment 139-1 (38 FR 9795) published in the FEDERAL REGISTER on April 20, 1973, amended Part 139, effective May 21, 1973, to make it applicable to all airports serving air carriers certificated by the Civil Aeronautics Board. As noted in the preamble to Amendment 139-1, the FAA recognized that the additional airports that are required to comply with Part 139 by virtue of Amendment 139-1 would not be able to comply with all of the requirements of Part 139 before the May 21, 1973, effective date. The FAA had determined that those airports were able to conduct a safe operation, and that provisional airport operating certificates, subject to such terms, conditions and limitations as the Administrator finds are reasonably necessary to assure safety in air transportation, should be issued to those airports pending their compliance with Part 139. Accordingly, a new § 139.12 was added to Part 139 which provisionally certificated for a period of 45 days (until July 5, 1973) airports and heliports which, on May 20, 1973, were serving CAB-certificated air carriers conducting only unscheduled operations or operations with small aircraft in order that they might continue to serve such air carriers pending compliance with Part 139. Section 139.12 also provided for the extension of that certification to May 21, 1974, upon the request of the airport operator prior to July 5, 1973, and compliance by the operator with the requirements of that section.

On June 28, 1973, the FAA issued Amendment 139-2 to Part 139 (38 FR 1774; July 3, 1973) amending § 139.12 by extending the July 5, 1973 date to October 5, 1973 (the time within which the operators of airports provisionally certificated under § 139.12(a) may meet the requirements of § 139.12(b) in order to apply for an extension of that certificate to May 21, 1974), and by extending the dates within which airport operators

must comply with the reporting requirements of § 139.12(e) (2) and (3) from September 1, 1973, and January 15, 1974, to November 1, 1973, and February 15, 1974, respectively, it then appearing to the FAA that the 45-day provisional certification period originally provided for in § 139.12 of Amendment 139-1 did not allow sufficient time for operators of those airports to determine the extent to which they might not be in full compliance with Part 139 and the consequent need to apply for an extension of their provisional certificate.

On September 10, 1973, the FAA issued a notice of proposed rulemaking (Docket No. 13202, Notice No. 73-25; 38 FR 26389, September 20, 1973) which proposes amendment of Part 139 to clarify the meaning of the word "serving" used in prescribing the applicability of the part and in certain provisions of the part, including § 139.12.

The FAA has received considerable comment and recommendations regarding the broadened applicability of Part 139 to include all airports serving CAB-certificated air carriers. A substantial number of those comments assert that it is unreasonable and unrealistic to consider those airports or landing areas, which only infrequently or occasionally, or seasonally, accommodate air carrier operations, as "serving" air carriers. It is further asserted that the economic and practical burdens of complying with the requirements of Part 139 in these circumstances are disproportionate to the benefits of the air carrier operation and unnecessary, by reason of the infrequent or occasional character of the air carrier activity.

The FAA believes, in the light of comments received and based on additional airport data and information collected during the course of the airport certification program, that a distinction may reasonably and properly be made between airports, for certification purposes, based on "frequency-of-operation." Precedent is found for this kind of distinction in § 121.7 of Part 121 of the Federal Aviation Regulations, which requires intrastate common carriage by commercial operators to be conducted in accordance with rules applicable to domestic air carriers, if the commercial operator's activity exceeds certain specified rates, i.e., a total of 36 or more flights or 18 or more round trips in any 90 consecutive days. This provision was incorporated in the regulations applicable to commercial operators in 1949, and no reasons based on safety considerations for abolishing this frequency-of-operation distinction have become apparent.

Accordingly, the FAA has proposed in Notice No. 73-25 to amend Part 139 to clarify and give definition to the term "serving" as used in the Part. As proposed therein Part 139 would be applicable to any airport expected to be used by scheduled air carriers as a regular, provisional, or refueling airport. Such airports are identified in air carrier operations specifications and have well defined meanings, as follows: a regular airport is an airport approved as a regular terminal or intermediate stop on an authorized route; a provisional airport is an airport approved for use by an air

carrier for the purpose of providing service to a community when the regular airport serving that community is not available; a refueling airport is an airport approved as an airport to which flights may be dispatched only for fueling. The Part would also be applicable to airports expected to be used by air carrier users when the "frequency-of-operation" is 36 or more flights in any period of 90 consecutive days. The effect of this amendment, if adopted, would be to narrow the applicability of Part 139.

In view of the foregoing and in order to allow time for receipt of views and comments in response to Notice 73-25, and time for consideration of those views and comments, prior to possible rule making, the FAA has determined that there is a need to extend from October 5, 1973, to December 15, 1973, the time within which the operators of airports provisionally certificated under § 139.12(a) may meet the requirements of § 139.12(b) in order to apply for an extension of that certificate to May 21, 1974, and to extend from November 1, 1973, to December 15, 1973, the time within which a certificate holder under § 139.12 would be required to submit a schedule for compliance showing how compliance with each requirement of Part 139 will be achieved and any requests for exemptions from any of those requirements. The requirement for submission of a status report before February 15, 1974 under § 139.12(e) (3) is not changed by this amendment.

Since this amendment is an extension of the effective dates of new requirements and imposes no additional burden on any person, I find that notice and public procedures thereon are unnecessary and that good cause exists for making this amendment effective on less than 30 days' notice.

This amendment is made under the authority of sections 313(a), 609, 610(a), and 612 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1429, 1430(a), and 1432), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

In consideration of the foregoing § 139.12 of Part 139 of the Federal Aviation Regulations is amended, as follows, effective October 4, 1973:

1. Paragraph (a) and (d) are amended by striking the date "October 5, 1973," and inserting in lieu thereof the date "December 15, 1973."

2. Paragraph (e) (2) is amended by striking the date "November 1, 1973," and inserting in lieu thereof the date "December 15, 1973."

As amended § 139.12 of Part 139 reads as follows:

§ 139.12 Issue of certificates for airports serving only unscheduled operations, or operations with small aircraft.

(a) Notwithstanding any other provision of this Part, a person who on May 20, 1973, operated an airport or heliport which serves CAB-certificated air carriers conducting only unscheduled operations or operations with small aircraft may continue to serve such air carriers and is certificated under this Part until December 15, 1973.

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(b) An airport operator may obtain an extension of the certificate to May 21, 1974, if together with a request for such extension and delivery of the certificate, it submits to the appropriate Regional Director:

(1) The name and address of the airport, the airport owner, and the airport operator; and

(2) Its assurances that at least the level of safety current at the airport on May 21, 1973, will be maintained.

(c) An airport operating certificate issued under this section shall—

(1) Contain a provision that at least the current level of safety will be maintained at the airport, and such other terms, conditions or limitations that the Administrator may find necessary; and

(2) Be effective until May 21, 1974, unless sooner surrendered, suspended, revoked, or otherwise terminated for violation of the terms of the certificate.

(d) If a request for extension and delivery of an airport operating certificate issued under this section is not made before December 15, 1973, the certificate terminates on that date.

(e) The holder of a certificate issued under this section shall—

(1) Maintain at least the level of safety current at the airport on May 21, 1973;

(2) Submit to the appropriate Regional Director before December 15, 1973, a schedule for compliance showing how compliance with each requirement of this Part will be achieved, and any requests for exemptions from any of those requirements in accordance with Part 11 or § 139.19 of this Part; and

(3) Submit a status report to the appropriate Regional Director before February 15, 1974, showing to what extent compliance has been achieved.

Issued in Washington, D.C., on September 25, 1973.

ALEXANDER P. BUTTERFIELD,
Administrator.

[FR Doc.73-20874 Filed 10-1-73;8:45 am]