

[Docket No. 13591, Amdt. 139-6]

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

Limited Certification of Airports and Heliports

The purpose of this amendment to Part 139 of the Federal Aviation Regulations is to provide for the certification and operation of land airports and heliports serving CAB-certificated air carriers conducting only unscheduled operations or operations with small aircraft.

This amendment is based on a Notice of Proposed Rule Making (Notice 74-15) issued in Washington, D.C., on March 27, 1974, and published in the FEDERAL REGISTER on April 1, 1974 (39 FR 11929). Interested persons have been afforded an opportunity to participate in the making of these amendments, and due consideration has been given to all comments received in response to that notice.

Amendment 139-1 was published in the FEDERAL REGISTER on April 20, 1973, and became effective May 21, 1973. The purpose of the Amendment was to: (1) Broaden the scope of the regulation to make it applicable to all airports serving

air carriers certificated by the Civil Aeronautics Board; (2) provide for the issuance of airport operating certificates to airport operators that would be required by that amendment to comply with Part 139; and (3) provide separately certain certification and operation rules for heliports that are required by the nature of those airports.

On July 4, 1973, Amendment 139-2 became effective and amended § 139.12 of the regulation by extending from July 5, 1973 to October 5, 1973, the time within which persons, who on May 20, 1973 were operating an airport or heliport serving CAB-certificated air carriers conducting only unscheduled operations or operations with small aircraft, might apply for an extension of their airport operating certificate, and to extend the time for filing the reports required of holders of these certificates.

Amendment 139-3, effective October 2, 1973, further extended the October 5, 1973, date to December 15, 1973.

Amendment 139-4, effective December 15, 1973, extended the December 15, 1973 date to April 2, 1974, in order to allow more time for an airport operator to apply for an extension of his provisional certificate and the deadline date for obtaining an airport operating certificate was extended from May 21, 1974 to October 15, 1974.

Section 139.12 of Part 139 provides for certification of airports and heliports which on May 20, 1973 served CAB-certificated air carriers conducting only unscheduled operations or operations with small aircraft. Airport operators who operate such airports and made application in accordance with § 139.12 have been issued "provisional" airport operating certificates. Under Amendment 139-4 these certificates were effective until October 15, 1974, after which date it was contemplated that certification of this group of airports would be accomplished in accordance with the certification and operating requirements generally applicable to air carrier airports serving scheduled operations under Part 139.

It now appears that compliance with the generally applicable certification and operating requirements is, in many cases, infeasible and impracticable, and that requiring full compliance with Part 139 in such cases would be contrary to the public interest.

A substantial group of airports now serve CAB-certificated air carriers conducting only unscheduled operations or operations with small aircraft. This group is estimated in size to number 345 airports. Unscheduled and small aircraft operation at many of these airports is irregular, occasional, infrequent, seasonal or temporary. Included in such operations are charter flights, supplemental air carrier flights, and flights of similar character to construction sites or recreation areas and the like.

The FAA considers that uniform application of the requirements of Part 139 is not feasible or practicable in many such cases and that provision should be

made for certification of these airports on an individual basis, based on an investigation of the operating circumstances and a subsequent finding made by the Administrator that the particular airport is properly and adequately equipped to conduct safe operations for the kind of air carrier operation to be conducted, and that compliance with certain other requirements of Part 139 would be contrary to the public interest. In the conduct of that investigation and in making that finding, the Administrator would review and evaluate airport characteristics, facilities, and equipment, including: landing area dimensions, strength and condition; clearances; marking and lighting; fire fighting and rescue capability; wind direction indicators; and airport safety surveillance capability. The proposal has been revised accordingly, as noted below, by setting forth an itemized listing of the operating factors which an applicant must include in his proposed operating specifications. This information, together with any investigation that the Administrator deems necessary, will permit him to determine the extent to which the airport is in compliance with the requirements of Part 139, and the extent to which compliance with the other requirements is not feasible and that it would be contrary to the public interest to require such compliance if the airport is otherwise properly and adequately equipped to conduct safe operations for the kind of air carrier operations to be conducted.

It is anticipated that in some cases it may be appropriate to issue the airport operating certificate to the air carrier. In those cases where the airport or landing area is unattended and the air carrier operates at that site under a lease or other permissive arrangement, and is effectively in control of the airport operations, issuance of the certificate and airport operations specifications to the air carrier will be considered.

In order to allow time for receipt and consideration of comments in response to the proposal contained in Notice 74-15, § 139.12 of Part 139 was amended (Amendment 139-5 issued and published concurrently with Notice 74-15) to extend from April 2, 1974 to August 15, 1974 the time within which provisional airport operating certificates could be extended, to extend the time for submitting a schedule of compliance showing how compliance with the requirements of Part 139 would be achieved, and to extend the termination date of those certificates to December 15, 1974.

A number of comments received in response to Notice 74-15 reasserted the argument made in opposition to Amendment 139-1 (when the applicability of Part 139 was broadened) that, in the enactment of section 612 of the Federal Aviation Act, the Congress did not intend that airports, other than airports regularly serving scheduled air carriers that hold certificates of public convenience and necessity issued by the CAB and operate large aircraft into those airports, be certificated. The FAA believes

that section 612 of the Federal Aviation Act applies to all airports that serve CAB-certificated air carriers, and that the rulemaking action was reasonable and necessary to comply with the Congressional mandate stated in the Act. In this connection, it should be noted that section 610(a)(8) makes it unlawful for any person to operate an airport serving air carriers certificated by the CAB without an airport operating certificate, or in violation of the terms of any such certificate.

Amendment 139-1 made Part 139 applicable, in addition to airports regularly serving scheduled air carriers operating large aircraft, to airports serving supplemental air carriers, certificated air carriers operating small aircraft (12,500 pounds or less maximum certificated takeoff weight), certificated air carrier charter operations, and certificated air carriers operating helicopters. However, it is not intended that Part 139 be applicable to airports at which air carrier training, ferry, check, or test operations are conducted, or to airports designated as "alternate" airports by air carriers, by reason of these operations. These airports are not by reason of these operations considered to be "serving" air carriers.

In general, and except as noted herein, the comment received in response to Notice 74-15 acknowledged the proposal as an acceptable procedure for certification of those airports to which it applies.

Recommendations for more specificity with respect to the content of the airport operations specifications were received. The amendment is responsive to those recommendations and that specificity is reflected in § 139.12a(c) by an itemized listing of operating factors to be covered in the operations specifications.

In addition, new § 139.12a specifies those sections of Part 139 (§§ 139.1, 139.3, 139.5, 139.7, 139.9, 139.15, 139.17) that are applicable to certificate holders and applicants under § 139.12a. Accordingly, except for those sections, no other requirements of Part 139 have application to applicants or certificate holders under § 139.12a.

Some question or objection was raised by the comments to the suggestion in the Notice that an airport operating certificate might be issued to an air carrier. It is anticipated that the incidence of such issuances would be rare. However, it appears that in some circumstances the air carrier may, in fact, be the "operator" and that the air carrier may be the appropriate certificate holder.

It should be pointed out, with respect to those objections raised in the comments that "provisional" and "limited" certification imposes undue economic burdens on airport operators, that the Airport Development Acceleration Act of 1973 (Pub. L. 91-258), which amends the Airport and Airway Development Act of 1970 (Pub. L. 91-258), provides that to the extent that a project cost of an approved project for airport development represents the cost of safety equipment required by rule or regulation for

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certification of an airport under section 612 of the Federal Aviation Act of 1958, the United States share in the allowable cost of such development, with respect to airport development project grant agreements entered into after May 10, 1971, may not exceed 82 percent. To the extent that Federal funds are available, it would appear that FAA participation in airport development would tend to minimize the economic impact of airport certification. In this connection, it appears that an air carrier would not be an eligible sponsor under the Airport and Airway Development Act of 1970.

Some apprehension was expressed in the comments that at the time of expiration of "provisional" certificates now in effect additional and burdensome requirements for certification might be imposed under "limited" airport certification. The FAA, as previously indicated, recognizes that with respect to the airports to which § 139.12a will apply, that certification and operating requirements should be determined on an individual basis, and that economic and practical considerations are essential to a public interest finding.

Holders of provisional airport operating certificates issued under § 139.12 would, under this amendment, have the option of retaining that certificate until the termination date of December 15, 1974 and complying with the reporting requirements of § 139.12, or surrendering that provisional certificate and obtaining a "limited" certificate under § 139.12a.

The FAA believes that this amendment will effectively provide for certification of airports serving CAB-certificated air carriers conducting only unscheduled operations or operations with small aircraft and comply with the Congressional mandate stated in section 612 of the Federal Aviation Act.

Since this amendment imposes no additional burden on any person and provides an alternative method for certification of airports serving limited operations conducted by CAB-certificated air carriers, I find that good cause exists under 5 U.S.C. 553(d) (3) 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, Part 139 of the Federal Aviation Regulations is amended, effective August 15, 1974, as follows:

1. By amending § 139.3 to read as follows:

§ 139.3 Certification: general.

No person may operate a land airport serving any CAB-certificated air carrier operating aircraft into that airport, in any State of the United States, the District of Columbia, or any territory or possession of the United States, without or in violation of an airport operating certificate for that airport, or in violation of the applicable provisions of this part

or the approved airport operations manual or airport operations specifications for that airport.

2. By amending § 139.5 to read as follows:

§ 139.5 Inspection authority.

Each applicant for an airport operating certificate, and each certificate holder for, or operator of, a certificated airport shall allow the Administrator to make any inspection or test to determine its compliance with the Federal Aviation Act of 1958, the Federal Aviation Regulations, the certificate, the approved airport operations manual or airport operations specifications, and the eligibility of the certificate holder to continue to hold its certificate.

3. By amending paragraph (a) of § 139.9 to read as follows:

§ 139.9 Amendment of airport operations manual or airport operations specifications.

(a) The Administrator may amend any airport operations manual approved under this part or any airport operations specifications issued under this part—

(1) Upon application by the certificate holder, if the Administrator determines that safety in air transportation and the public interest allow the amendment; or

(2) If the Administrator determines that safety in air transportation and the public interest require the amendment.

4. By amending paragraphs (b) and (c) of § 139.9 by inserting the words "or specifications" immediately following the words "airport operations manual."

5. By amending § 139.12 to read as follows:

§ 139.12 Provisional airport operating certificates.

(a) A provisional airport operating certificate issued under this § 139.12 in effect prior to August 15, 1974 shall be effective until December 15, 1974, unless sooner surrendered, suspended, revoked, or otherwise terminated for violation of the terms of the certificate.

(b) The holder of a provisional certificate shall—

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

(2) Submit to the appropriate Regional Director before October 15, 1974, a schedule for compliance showing how compliance with each requirement of this part will be achieved, together with any request for exemptions from any of those requirements in accordance with Part 11 of this chapter or § 139.19; and

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

6. By adding a new § 139.12a immediately following § 139.12 to read as follows:

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

(a) Notwithstanding any other provi-

sion of this part, except as provided in paragraph (e) of this section, an applicant for an airport operating certificate who operates an airport or heliport which serves or is expected to serve CAB-certificated air carriers conducting only unscheduled operations or operations with small aircraft is entitled to a limited airport operating certificate if—

(1) It makes application, on the form and in the manner prescribed by the Administrator, to the appropriate Regional Director for an airport operating certificate, together with proposed airport operations specifications; and

(2) The Administrator, after investigation, finds that it would be contrary to the public interest to require compliance with all applicable requirements of this part, and that the airport is otherwise properly and adequately equipped to conduct a safe operation for the kind of air carrier operation proposed.

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

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

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

(c) Airport operations specifications issued under this section contain the following:

(1) The name and address of the airport;

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

(3) The type and frequency of air carrier operations the airport serves or is expected to serve;

(4) Landing area or runway dimensions to be maintained at the airport;

(5) Strength and condition of air operations areas to be maintained at the airport;

(6) Marking and lighting of air operations areas and obstructions to be maintained at the airport;

(7) Fire fighting and rescue equipment and service to be provided;

(8) Means for wind direction determination to be provided;

(9) Means for safety inspection of the airport;

(10) Any other item that the Administrator determines is necessary to cover a particular situation.

(d) Airport operations specifications issued under this section are not a part of an airport operating certificate.

(e) The provisions of §§ 139.1, 139.3, 139.5, 139.7, 139.9, 139.15, and 139.17 are applicable to applicants and certificate holders under this section.

Issued in Washington, D.C., on August 12, 1974.

ALEXANDER P. BUTTERFIELD,
Administrator.

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