A-243

CIVIL AIR REGULATIONS

PART 42—NONSCHEDULED AIR CARRIER CERTIFICATION AND OPERATION RULES

Effective August 1, 1946

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

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EXPLANATORY STATEMENT OF PART 42

The Civil Aeronautics Act of 1938 requires that all air carriers have an air carrier operating certificate. Section 610 (a) (4) provides that it shall be unlawful for any person to operate as an air carrier without an air carrier operating certificate, or in violation of the terms of any such certificate.

The term "air carrier" is defined in some detail in the Act and those definitions are set forth under § 42.9 of Part 42.

It will be noted that the term "air carrier," in addition to covering the carriage of mail, covers the carriage by aircraft of persons or property as a common carrier for compensation or hire between any of the places described in the definitions. The term "common carrier," which is used in the definition of air carrier, may be unfamiliar to many of those engaged in the business of transportation by aircraft. The general meaning of the term is quite simply stated, but its application to specific situations may sometimes be more difficult. For this reason it has been considered by the courts in many cases, and much has been written regarding its application in other fields of transportation.[1] A common carrier is generally defined as one who, as a regular business, undertakes for hire to carry such persons as may apply, or such property as may be offered, so long as capacity is available. The fact that the operation is not scheduled and is not confined to fixed terminals or specific routes, does not prevent the operation from falling within the classification of common carrier, nor is it necessary that rates be published. Perhaps the situation most comparable to many fixed base or charter operators is found in the field of taxicab operations which have been held to be common carriers even where the passenger is entitled to the exclusive use of the vehicle. The information presented to the Board, particularly in its investigation of nonscheduled operations which it conducted in 1945, indicated that many, if not most, of the operators often described as fixed base or charter operators fall within the definition of the term "air carrier."

For those who feel that they are not offering a service to the public but are offering a service to a selected few and thus doubt whether the operations come under the rules provided in this Part, it may be very helpful if they will refer their problem to the office of the Civil Aeronautics Administration Regional Administrator in their area or write to the Civil Aeronautics Board, Washington 25, D. C., setting forth the character of their operations and requesting an opinion regarding their status. For those who are doubtful, but who wish to eliminate any possibility of operating unlawfully, it is suggested that they file their application for a nonscheduled air carrier operating certificate with the Administrator. In the event it is thereafter determined by any such applicant that he is not an air carrier he may withdraw his application without prejudice.

[1] For a more detailed discussion of the whole problem of scheduled and nonscheduled air carriers, including discussion of the term "common carriers," see an article by George C. Neal, General Counsel for the Civil Aeronautics Board, entitled "The Status of Non-Scheduled Operations Under the Civil Aeronautics Act of 1938" published in 1946 by Duke University School of Law in Law and Contemporary Problems, Vol. XI No. 3.

GENERAL

The following regulations are prescribed for nonscheduled air carrier operations in interstate, overseas, or foreign air transportation.

42.0 AIR CARRIER OPERATING CERTIFICATE

42.00 Certificate required. No person shall operate as an air carrier without an air carrier operating certificate issued by the Administrator, or in violation of the terms of any such certificate.

42.01 Issuance. An air carrier operating certificate describing the nonscheduled operations authorized and prescribing such operating specifications and limitations as may be reasonably required in the interest of safety, will be issued by the Administrator to a properly qualified citizen of the United States who demonstrates that he is capable of conducting the proposed operations in accordance with the applicable requirements hereinafter specified. Application for a certificate, or application for amendment thereof, shall be made in the manner and contain the information prescribed by the Administrator.

42.02 Duration. An air carrier operating certificate will continue in effect until canceled, suspended, revoked, or a termination date is set by the Board, after which it shall be surrendered to the Administrator upon request.

42.03 Display. The air carrier operating certificate must be kept available at the carrier's principal operations office for inspection by an authorized representative of the Administrator or Board.

42.04 Inspection. An authorized representative of the Administrator or the Board shall be permitted at any time and place to make inspections or examinations to determine the operator's compliance with the Civil Air Regulations.

42.1 AIRCRAFT REQUIREMENTS

42.10 General. Aircraft must be certificated in accordance with the airworthiness requirements of the Civil Air Regulations, and shall be of a type and class which the Administrator finds safe for the service offered.

42.11 Oxygen apparatus. Aircraft operated at an altitude exceeding 10,000 feet above sea level continuously for more than 30 minutes, or at an altitude exceeding 12,000 feet above sea level for any length of time, shall be equipped with effective oxygen apparatus and an adequate supply of oxygen available for the use of the operating crew. Such aircraft shall also be equipped with an adequate separate supply of oxygen available for the use of passengers when operated at an altitude exceeding 12,000 feet above sea level.

42.12 Emergency equipment. Aircraft to be flown long distances over uninhabited terrain must carry such additional emergency equipment as the Administrator designates for the particular operation involved. All aircraft operated over water shall be equipped with life preservers, or flotation devices readily available for each person aboard, and with a Very pistol or equivalent signal equipment, except that this requirement will not apply when such operations consist only of landings, take-offs, or flights of short duration over water where the Administrator finds that such equipment is not necessary. In addition, all aircraft operated for long distances over water shall be equipped with a sufficient number of life rafts to accommodate adequately all occupants, and such additional emergency equipment as may be required by the Administrator.

42.13 Required instruments and equipment. The following instruments and equipment for the type of operations specified shall be installed:

(a) **CFR (day)**

(*1*) airspeed indicator,
(*2*) sensitive altimeter adjustable for change in barometric pressure,
(*3*) magnetic direction indicator,
(*4*) tachometer for each engine,
(*5*) oil pressure gauge for each engine using pressure system,
(*6*) temperature gauge for each liquid-cooled engine,
(*7*) oil temperature gauge for each air-cooled engine,
(*8*) manifold pressure gauge, or equivalent, for each altitude engine,
(*9*) fuel gauge indicating the quantity of fuel in each tank,
(*10*) position indicator, if aircraft has retractable landing gear or flaps,
(*11*) two-way radio communications system when aircraft is operated in airport traffic zones,

(12) certificated safety belts for all passengers and members of the crew,
(13) fire extinguisher(s) adequate for the aircraft,
(14) source of electrical supply, sufficient to operate all radio and electrical equipment,
(15) one spare set of fuses or 3 spare fuses of each magnitude,
(16) first-aid kit adequate for the crew and passengers.

(b) CFR (night) and IFR

(1) instruments and equipment specified in § 42.13 (a),
(2) set of certificated forward and rear position lights,
(3) at least one electric landing light,
(4) certificated landing flares as follows, if the aircraft is operated beyond a 3-mile radius from the center of the airport of take-off:

Maximum authorized weight of aircraft	Flares
3,500 pounds or less	5 class-three or 3 class-two
3,500 pounds to 5,000 pounds	4 class-two
above 5,000 pounds	2 class-one or 3 class-two and 1 class-one

If desired, flare equipment specified for heavier aircraft may be used.

(5) two-way radio communications system and navigational equipment appropriate to the ground facilities to be used,
(6) gyroscopic rate-of-turn indicator,
(7) bank indicator,
(8) clock with a sweep-second hand,
(9) generator of adequate capacity,
(10) one set of instrument lights,
(11) one gyro direction indicator,
(12) one outside air temperature gauge easily readable from the pilot's position,
(13) one carburetor temperature gauge or equivalent approved device,
(14) if vacuum system is used, a vacuum gauge on the instrument panel installed in lines leading to air-driven gyroscopic instruments.

42.14 Pilot check list. A pilot's check-off list shall be furnished for and maintained in the pilot compartment of the aircraft.

42.15 Maintenance. All aircraft shall be maintained in airworthy condition and all repairs, alterations, and overhauls shall be performed in accordance with Part 18.

42.150 Inspections. Aircraft must be given:

(a) an annual inspection within each 12-month period, and
(b) a periodic inspection within each 100 hours of flight time.

The annual inspection required in (a) will be accepted as one such periodic inspection.

42.2 PILOT RULES

42.20 First pilot.

(a) Pilot in command. The first pilot is in command of the aircraft at all times during flight and is responsible for the safety of persons and goods carried, and for the conduct and safety of members of the crew.

(b) Preflight action. Prior to commencing a flight the pilot shall familiarize himself with the latest weather reports issued by the United States Weather Bureau pertinent to the flight and with the information necessary for the safe operation of the aircraft en route and on the airports or other landing areas to be used, and determine that the flight can be completed with safety.

(c) Maps and flight equipment. The pilot shall have in his possession in the cockpit proper flight and navigational facility maps, including instrument approach procedures when instrument flight is authorized, and such other flight equipment as may be necessary to properly conduct the particular flight proposed.

(d) Check and control test. Immediately prior to take-off the pilot shall check the items specified in the check-off list and in addition shall test the flight controls to the full limit of travel, each engine individually, at run-up r.p.m., check the engine instruments and as many as possible of the flight instruments.

(e) Emergency decisions.

(1) The first pilot is authorized to follow any course of action which appears necessary in emergency situations which, in the interest of safety, requires immediate decision and action. He may in such situations, deviate from prescribed methods, procedures, or mini-

mums to the extent required by considerations of safety and shall, when practicable, keep the proper control station fully informed regarding the progress of the flight. When such emergency authority is exercised the pilot shall file a report of such deviation with the Administrator.

(2) In an emergency requiring either the dumping of fuel or a landing at a weight in excess of the authorized landing weight, the first pilot may elect to follow whichever procedure he considers safer.

42.21 Flight time limitations. A pilot may not fly more than 10 hours in any 24 consecutive hours without an intervening period of at least 8 hours during which he is relieved of all duty with the carrier.

42.22 Certification and experience.

(a) **First pilot.** Any pilot serving as first pilot must hold a valid commercial pilot rating with an aircraft type and class rating for the aircraft in which he is to serve, and for:

(1) **Day flight CFR,** he must have had at least 50 hours of cross-country flight time as pilot or copilot.

(2) **Day flight IFR,** he must possess a currently effective instrument rating and have had a total of at least 500 hours of flight time as pilot or copilot including 100 hours of cross-country flight.

(3) **Night flight CFR or IFR,** he must possess a currently effective instrument rating and have had a total of at least 500 hours of flight time as pilot or copilot, including 100 hours of cross-country flight of which 25 hours shall have been during the hours of darkness.

(b) **Second pilot.** Any pilot serving as second pilot in an aircraft requiring more than one pilot must hold for:

(1) **CFR flights,** a valid commercial pilot rating with the appropriate type and class ratings,

(2) **IFR flights,** in addition to (1), a currently effective instrument rating.

42.23 Recent flight experience.

(a) **General.** No pilot shall serve as first pilot in nonscheduled air transportation unless within the preceding 90 days he has made at least 5 take-offs and landings to a full stop in the same type and class of aircraft, 2 of which must have been in the same make and model. He shall not serve during the hours of darkness unless he has made at least 5 take-offs and landings to a full stop during the hours of darkness within the preceding 90 days.

(b) **Instrument flight.** A first pilot shall not pilot an aircraft under instrument flight rules unless within the preceding 6 months he has had a minimum of 6 hours of instrument flight time, at least 2 hours of which shall have been acquired by actual flight in the overcast while on an instrument flight plan filed with the appropriate traffic control center.

42.24 Logging flight time.

(a) A first pilot may log the total flight time elapsing during his command of the aircraft.

(b) A second pilot may log 50 percent of the total flight time, or he may log all the flight time during which he is the sole manipulator of the controls.

42.240 Logging instrument flight time. Instrument flight time may be logged as such by the pilot actually manipulating the controls only when the aircraft is flown solely by reference to instruments either under actual or properly simulated instrument conditions.

42.3 FLIGHT OPERATION RULES

42.30 Manifest. The Administrator may require a flight manifest form for each flight if he finds it necessary for the safe operation of a type and class of aircraft or a particular type of operation. This form shall show the distribution in the aircraft of the total payload carried, and must be signed by the pilot or other authorized person charged with the duty of loading the aircraft. The pilot shall retain the original manifest until he has completed the flight and the air carrier must keep a copy available for inspection for at least 90 days at the principal operations office.

42.31 Flight record. A flight record for each flight beyond 25 miles from the airport or landing area of origin shall be kept for a period of 12 months at the principal operations office, and shall contain the following information:

(a) date and type of flight—CFR (day or night), IFR, or combination.
(b) aircraft make, model, and NC number.
(c) names of pilot and crew,
(d) point of departure,
(e) point of destination,
(f) route to be followed and intended stops en route.

(g) estimated time of arrival at destination,
(h) amount of fuel on board (in hours of cruising consumption),
(i) names and addresses of passengers carried.

Such flight record is in addition to the flight plan required by § 60.250 for IFR flight in control areas.

42.32 Instruments and equipment serviceability. Prior to starting any flight, all instruments and equipment must be in operative condition. If any instrument or equipment becomes inoperative in flight it shall be repaired or replaced at the first airport where repairs or replacements are readily available, or the flight may continue to its destination if the pilot determines that with the remaining serviceable instruments and equipment the flight can be continued with safety.

42.33 Fuel supply.

(a) **Flight under contact flight rules (CFR).** A flight shall not be started unless the aircraft carries sufficient fuel and oil, considering the wind and other weather conditions forecast, to fly to the next point of intended landing and thereafter for a period of at least 30 minutes at normal cruising consumption.

(b) **Flight under instrument flight rules (IFR).** Sufficient fuel and oil, considering the wind and other weather conditions forecast, shall be carried to:

(1) Complete the flight to the point of first intended landing, and thereafter,
(2) fly to the alternate airport, and thereafter,
(3) fly at normal cruising consumption for a period of 45 minutes.

42.34 Weather minimums.

(a) **Take-off.** No flight may be started when the visibility is less than one mile or the ceiling is less than 200 feet at the point of take-off.

(b) **Destination.** No flight may be started unless the current weather reports and forecasts show a trend indicating that the ceiling and visibilities at the place of intended landing are, and will remain, at or above the following minimums:

(1) **Contact flight operations (CFR).**
(a) ceiling—1,000 feet,
(b) visibility—3 miles.
(2) **Instrument flight operations (IFR).**
(a) ceiling—500 feet,
(b) visibility—1 mile,
(c) alternate airport: if airport is served by a radio directional facility, ceiling—1,000 feet, visibility—3 miles; if airport is not served by a radio directional facility, visibility 3 miles and a ceiling of 1,500 feet with broken clouds or better.

42.35 Flight altitude rules

(a) **Day (CFR) operation.** Except during take-off and landing, aircraft shall not be flown less than 500 feet from any obstacle in flight, except in such cases as may be specifically authorized by the Administrator.

(b) **Night (CFR) or instrument (IFR) operation.** Except during take-off and landing, no aircraft shall be flown at an altitude of less than 1,000 feet above the highest obstacle located within 5 miles of the aircraft in flight.

42.36 Icing conditions. Aircraft must not be flown into known or probable heavy icing conditions and may be flown into light or medium icing conditions only if the aircraft is equipped with an approved means for de-icing the wings, propellers, and such other parts of the aircraft as are essential to safety.

42.37 Instrument approach and landing rules. Unless otherwise instructed by a control tower or center, the standard instrument approach procedures authorized for the airport shall be used.

42.4 MISCELLANEOUS RULES

42.40 Pilots at controls. *In the case of aircraft requiring two or more pilots, two pilots* must remain at the controls at all times while landing and taking off, and while the aircraft is en route except when the absence of one is necessary in connection with his regular duties or when he is replaced by a person authorized under the provisions of § 42.41.

42.41 Admission to pilot compartment. In aircraft having a separate pilot compartment, no person other than a crew member, a check pilot, an inspector of the Administrator or a representative of the Board in pursuance of official duty, or a person whose admission is approved by the first pilot, may be admitted to the pilot compartment. In the latter case, the first pilot must remain at the controls.

42.42 Manual. When the Administrator finds that the operation and type of aircraft used so requires, the air carrier shall prepare and maintain a manual for the use and guidance of operations and maintenance personnel which contains full information necessary to guide flight and ground personnel in the conduct of flight operations, and to inform such personnel regarding their duties and responsibilities. The manual must be in a form and content approved by the Administrator, and be furnished to all persons designated by the Administrator or Board. All copies must be kept up-to-date.

42.43 Records. Each carrier shall keep at the operating base the following current records with respect to all aircraft, aircraft engines, propellers, and where practicable, appliances used in air transportation:

(a) total time and service,
(b) time since last overhaul,
(c) time since last inspection, and
(d) mechanical failures.

42.44 Emergency flights. In the case of emergencies necessitating the transportation of persons or medical supplies for the protection of life or property, the rules contained herein regarding type of aircraft, equipment, and weather minimums to be observed will not be applicable: *Prorided*, That within 48 hours after any such flight returns to its base the air carrier shall file a report with the Administrator setting forth the conditions under which the flight was made, the necessity therefor, and giving the names and addresses of the crew and passengers.

42.45 Exemptions. An air carrier engaged in nonscheduled air carrier operations on or before August 1, 1946, may continue to engage in such nonscheduled air carrier operations without an air carrier operating certificate until such time as the Administrator shall pass upon the application for such certificate if prior to August 1, 1946 he has filed with the Administrator an application for such certificate.

42.46 Exceptions. Whenever upon investigation the Administrator finds that the general standards of safety required for air carrier operations require or permit a deviation from any specific requirement of this Part for a particular operation or a class of operations for which an application for an air carrier operating certificate has been made, he may issue an air carrier operating certificate with appropriate changes. The administrator shall promptly notify the Board of any deviations included in the air carrier operating certificate and the reasons therefor

42.9 DEFINITION

Air carrier means any citizen of the United States who undertakes, whether directly or indirectly, or by a lease, or by any other arrangement the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation, between any of the following places: a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; places in the same State of the United States through the air space over any place outside thereof; places in the same Territory or possession (except the Philippine Islands) of the United States, or the District of Columbia; a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; a place in the United States and any place outside thereof.

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