FS-180

UNITED STATES OF AMERICA
FEDERAL AVIATION AGENCY
WASHINGTON, D.C.

Civil Air Regulations - Revised Part 45

Effective: May 1, 1963
Issued: February 21, 1963

COMMERCIAL OPERATOR CERTIFICATION AND OPERATION RULES

As published in the Federal Register on March 1, 1963 [28 F.R. 2000].

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[Regulatory Docket No. 1517]

PART 45—COMMERCIAL OPERATOR CERTIFICATION AND OPERATION RULES

This revision incorporates into Part 45 of the Civil Air Regulations certain rules and procedures pertaining to the issuance, renewal, and duration of commercial operator certificates. The rules will provide the Administrator with information pertaining to the management, control, and financial resources of an applicant for a commercial operator certificate which are needed to carry out statutory responsibilities and to make a sound determination as to the applicant's ability to conduct operations with the degree of safety required in the public interest.

The Federal Aviation Agency published as a notice of proposed rule making (27 F.R. 12376) and circulated as Draft Release No. 62-53, dated December 7, 1962, a proposal to amend Part 45 of the Civil Air Regulations with respect to application and renewal requirements for certification under that part. In addition, a major portion of the provisions of the proposal, as it applied to commercial operators, was published as a notice of proposed rule making in the FEDERAL REGISTER (27 F.R. 8356) and set forth in Draft Release No. 62-39, on August 22, 1962, as a revision of Part 42 of the Civil Air Regulations.

It was the stated intention of the Agency to eventually eliminate Part 45 by covering commercial operators of large aircraft in a revised Part 42 of the Civil Air Regulations and covering commercial operators of small aircraft in a Part 125 [New] of the Federal Aviation Regulations. (See 27 F.R. 10900.) However, the Agency recodification program announced in the FEDERAL REGISTER of November 15, 1961 (26 F.R. 10698), has now reached a point at which it will soon publish a notice of proposed rule making combining into one new part the operating rules of Parts 40, 41, and 46 and the operating rules for Part 42 that are adopted by the Agency as a result of the circulation of Draft Release No. 62-39. Similarly, there will be published in that NPRM a new part combining the certification rules of Parts 40, 41, 42, and 46.

A revised Part 42 will be published in the near future and will incorporate the substance of the rules contained in this revised Part 45. However, it is not anticipated that revised Part 42 will become effective until it has been recodified as described above. Therefore, upon the date that the recodified Parts 40, 41, 42, and 46, and new Part 125, become effective, Part 45 will be rescinded. This revision while primarily for the purpose of making final the rules proposed in Draft Release No. 62-53, restates Part 45 completely for the convenience of the user.

As was stated in Draft Release No. 62-53, the financial stability of persons engaged in the carriage of persons and cargo for compensation or hire has been of increasing concern to the Congress. In addition, recent FAA enforcement actions involving the revocation of certain commercial operator certificates has revealed deceptive management techniques, coupled with practices of falsification of required records. Investigations by the FAA have also revealed that some persons holding only a commercial operator certificate have been operating beyond the scope of their certificate authority by conducting interstate common carriage operations, i.e., engaging in air transportation as defined in the Federal Aviation Act of 1958, even though the holder of only a commercial operator certificate is not authorized to conduct such operations. That commercial operations under Part 45 constitutes a significant part of air operations is shown by the number of operators in this field. As of the present time there are 32 commercial operators of large aircraft certificated under Part 45, having a total of 48 aircraft. These aircraft range in size from the DC-3 to the Electra. One operator has a total of 5 aircraft and the others operate from one to four aircraft.

Draft Release No. 62-53 therefore proposed that applicants for original certification as a commercial operator, or for the renewal of such a certificate, be required to disclose pertinent information regarding persons holding management positions and other persons controlling or having an ownership interest in the applicant; that detailed financial statements be submitted with the application, prepared and maintained on an accrual basis in accordance with generally accepted accounting principles; and that applicants submit current information regarding changes in pertinent names and addresses, and of material changes in financial information submitted. The proposal further required each holder of a commercial operator certificate to submit a semi-annual financial report, and to retain copies of all of its contracts for a period of one year.

In general, comments received as a result of circulation of the Draft Release concurred with the proposal's requirements with relation to disclosure of ownership, management personnel, and associated business enterprises. The purpose of this information, in general, is to make known the person or persons to whom a certificate is issued and to prevent the use of mere business names or corporate devices to obtain certificates when not otherwise justified.

Certain of the comments received objected to the proposal on the ground that, while there is a relationship between financial status and safety, the commentators did not believe it to be as direct or conclusive as shown in the proposal. The comments, in effect, question the need for the financial information, and the power of the Administrator to require it, and have pointed to the burden involved in furnishing it. The information is needed in order to determine whether the financial condition of the operator is conducive to observation by it of the various air safety requirements, some of which unavoidably involve considerable expense. The link between poor financial condition of an aeronautical enterprise and a poor safety record was recognized early and was one of the factors which led to enactment of the Civil Aeronautics Act of 1938. Recent accident investigations have strongly confirmed the continuing existence of this nexus. While the establishment of safety requirements and inspection and enforcement of safety requirements by this Agency is indeed the main line of defense against accidents, this history demonstrates that effective accident prevention further requires that enterprises engaged in commercial operation of aircraft not be in a financial condition which induces them to seek cost savings in the field of aircraft maintenance and other air safety requirements. Recent legislation has clarified the responsibility of the Civil Aeronautics Board for policing the continuing financial fitness of supplemental air carriers. It is clear that the Administrator has statutory responsibility to determine all aspects of an applicant's ability to conduct safe operation. In addition, the financial fitness of commercial operators which are not "air carriers" is not subject to scrutiny by any other Federal agency with respect to safety. The Agency must exercise its powers in this respect, in order to carry out the mandate to provide adequately for safety in air commerce. The resulting burden on the operators and the Agency is therefore unavoidable.

It was not the intent of Draft Release No. 62-53, nor is it the intent of this rule, to indicate that financial ability is conclusive as to whether an applicant can or cannot conduct safe operations. Financial status is but one of the important considerations entering into such a determination. Other elements such as equipment, skill, and experience are equally or more important. The important point is that under present procedures, the Administrator does not have sufficient detailed and reliable information pertaining to the management, control, and financial status of commercial operators to be able to carry out his statutory responsibilities and make a sound determination regarding an applicant's ability to conduct operations with the degree of safety required in the public interest.

Some of the proposals contained in Draft Release 62-53 have been revised as a result of comments received. The majority of these revisions involve minor changes in language or phraseology and do not affect the intent or substance of the final rule. Those changes which do affect substance do not impose any additional burden.

In revised § 45.4 (45.3(b)(3) in the Draft Release) the requirement that financial statements submitted with an application relate to a date at least 45 days prior to the date of application, has been extended to 60 days. Revised § 45.4(a)(4) (45.3(b)(3)(iv) in the Draft Release) has been revised to require an itemization of claims in litigation against the applicant rather than of outstanding judgments against it, since judgments would, under ordinary accounting practices, be set forth as liabilities. Revised § 45.4(a)(3) (45.3(b)(3)(iii) in the Draft Release) has been restated so as

to require the reporting of only those liabilities that are overdue. Revised § 45.5(b)(2), which authorizes denial of a certificate based on past employment of certain persons with carriers whose certificates has been revoked, has been amended so as to apply only to persons whose employment contributed materially to the reasons for which that certificate was revoked. Revised § 45.8 (§ 45.10 in the Draft Release) requires each holder of a commercial operator certificate to retain, for one year, a copy of each contract under which it provides services as a commercial operator. Several of the comments received indicate that many such contracts are oral and not reduced to writing. Therefore, in order that some record may be made of these oral contracts, language has been inserted to require the retention, for the same period, of a memorandum stating the elements of each such contract.

The regulation as issued expressly provides for waiver by the Administrator of submission of any part of the required financial information in individual cases. This authority, of course, will be exercised only where there is no doubt at that time of the continuing financial fitness of the operator. Several operators stated in their comments that the regulation should be amended to provide confidential treatment of certain information required to be disclosed in applications or reports. Such an amendment is not required as the Administrator may at any time and upon request, treat that information as confidential, under section 1104 of the Federal Aviation Act of 1958.

Interested persons have been afforded an opportunity to participate in the making of this regulation and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, Part 45 of the Civil Air Regulations is amended as hereinafter set forth, effective May 1, 1963.

Issued in Washington, D.C., on February 21, 1963.

N. E. HALABY,
Administrator.

Sec.

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AUTHORITY: §§ 45.1 to 45.12 issued under secs. 313(a), 601, 607, 609 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1427, 1429).

§ 45.1 Applicability of part.

The provisions of this part shall be applicable to citizens of the United States engaging in the carriage in air commerce of goods or passengers for compensation or hire, unless such carriage is conducted under the provisions of an air carrier operating certificate issued by the Administrator. For the purpose of this part, student instruction, banner towing, crop dusting, seeding, and similar operations shall not be considered as the carriage of goods or persons for compensation or hire.[1]

§ 45.2 Certificate required.

No person subject to the provisions of this part shall engage in air commerce using aircraft of more than 12,500 pounds maximum certificated take-off weight until he has obtained from the Administrator a commercial operator certificate: *Provided*, That no person holding an air carrier operating certificate authorizing him to operate such aircraft shall be required to obtain or be eligible for any commercial operator certificate unless he holds only an air carrier operating certificate issued pursuant to Part 42 of this subchapter and carries or intends to carry passengers for compensation or hire as a common carrier between any two points within a State with the frequency set forth in § 45.5(a)(2).

§ 45.3 Application for original certification and renewal of certificates.

(a) An application for the original issuance or renewal of a commercial operator certificate is made on an FAA application form which may be obtained at any FAA Air Carrier District Office and is submitted at least 60 days before the date of intended operations, or before the expiration date of the certificate in the case of an application for renewal, to the FAA Air Carrier District Office in whose area the applicant proposes to establish, or has established, his principal base of operations.

(b) The applicant shall submit with the application a signed statement showing:

(1) If the applicant is a corporation:

(i) The names and addresses of all stockholders, and the amount of stock held by each, and, in the event such stockholders are not the sole beneficial owners of the stock, the names and addresses of the beneficial owners thereof;

(ii) The names and addresses of all directors, officers, and those persons employed or who will be employed in the management positions described in § 45.5(b)(2); and

(iii) The names and addresses of all persons directly or indirectly controlling or controlled by the applicant, and all persons under direct or indirect common control with the applicant.

(2) If the applicant is not a corporation:

(i) The names and addresses of all persons having a financial interest in the business and the nature and extent of such interest; and

(ii) The names and addresses of all persons who will be employed in the management positions described in § 45.5(b)(2).

(3) The financial information set forth in § 45.4.

(4) 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 such contract.

(c) An applicant for, or the holder of, a commercial operator's certificate shall notify the Administrator within 10 days after the occurrance of any of the following:

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

(2) A change in the financial information submitted to the Administrator under § 45.4 occurring while the application for certification issuance or renewal is pending before the FAA, which would make the applicant's financial situation substantially less favorable than originally reported.

§ 45.4 Financial information required for original certification or renewal.

(a) The following is the financial information required to be submitted, under § 45.3(b)(3), by each applicant for the original issuance or renewal of a certificate under this part:

(1) A Balance Sheet which shows assets, liabilities, and net worth, as of a date not exceeding 60 days before the date of application.

(2) In the case of an application for renewal, a Profit and Loss Statement for a fiscal year ending at a date not more than 60 days before the date of the application, with separation of items relating to applicant's commercial operator activities from his other business activities. The applicant shall submit in support of the operating income shown on the profit and loss statement a listing and brief description of the nature and scope of the commercial operator contracts which gave rise to the operating income shown, including the names of the contracting parties and the date and duration of each such contract. However, if the applicant's regular fiscal year for income tax purposes ends on a date more than 60 days before the date of application, the applicant may submit a Profit and Loss Statement covering such normal fiscal year, plus a supplementary Profit and Loss Statement for the period from the end of the regular fiscal year to a date not more than 60 days before the date of application.

(3) An itemization of over-due liabilities showing amounts, names and addresses of creditors, description of indebtedness, and due date of obligations.

(4) An itemization of claims in litigation against the applicant showing the amounts claimed, the names and address of the claimants, and a description of the claims.

(5) A detailed analysis covering the first 3 months of the proposed operation subsequent to the possible issuance or renewal of the certificate applied for which shows:

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

(ii) Estimated amount of operating

[1] Under circumstances where it is doubtful whether the operations are for "compensation or hire," the test to be applied is whether the air carriage is merely incidental to the operator's other business or is, in and of itself, a major enterprise for profit.

and nonoperating expenses by expense objective classification; and

(ii) Estimated profit or loss.

(6) An estimate of the cash that will be needed during the first 3 months of the proposed operation after the possible issuance or renewal date of the certificate applied for to cover:

(i) Acquisition of property and equipment.

(ii) Retirement of debt.

(iii) Additional working capital.

(iv) Operations (losses).

(v) Other (explain).

(7) An estimate of the cash that will be available from the following sources during the first 3 months of the proposed operation after the possible issuance or renewal of the certificate applied for which shows:

(i) Sale of property or flight equipment.

(ii) New debt.

(iii) New equity.

(iv) Working capital reduction.

(v) Operations (profits).

(vi) Depreciation and amortization.

(vii) Other (explain).

(8) Such other financial information as may be required by the Administrator to enable him to determine that the applicant has sufficient financial resources to conduct its operations with the degree of safety required in the public interest.

(b) All financial statements filed with the FAA under this part shall be based on accounts prepared and maintained on an accrual basis in accordance with generally accepted accounting principles applied on a consistent basis, and shall contain the name and address of the applicant's public accounting firm, if any.

§ 45.5 Issuance of operating certificate.

(a) A commercial operator certificate is issued to an applicant if the Administrator after investigation, including such verification of financial and other information submitted as may be necessary, finds that the applicant is properly and adequately equipped and able to conduct a safe operation in accordance with:

(1) The provisions of Part 42 of this subchapter; or

(2) The provisions of Part 40 of (except §§ 40.1, 40.10 and 40.12 through 40.17) this subchapter or such other requirements as the Administrator finds necessary to provide an appropriate level of safety for the operation, if the applicant carries or intends to carry passengers for compensation or hire between two points entirely within a state with at least the following frequency—

(i) Two flights, or one round trip, a week on the same day or days of the week for any eight or more weeks in any 90 consecutive days; or

(ii) A total of 36 or more flights, or 18 or more round trips, in any 90 consecutive days.

(b) The Administrator may deny an application for a commercial operator certificate if he finds:

(1) That an air carrier, or commercial operator, certificate previously issued to the applicant has been revoked,

(2) That a person who was employed in a management position similiar to any of those listed in subdivision (i) to (v) of this subparagraph with (or has exercised control with respect to) any operator whose air carrier or commercial operator certificate has been revoked, will be employed in any of those positions or a similar position (or will be in control of or have substantial ownership interest in the applicant) and that the person's employment or control contributed materially to the reasons for which that certificate was revoked:

(i) General manager,

(ii) Director of Operations,

(iii) Director of Maintenance and Airworthiness,

(iv) Chief pilot,

(v) Chief inspector of quality control.

(3) That for financial or other reasons the applicant is not properly and adequately equipped or able to conduct a safe operation in accordance with paragraph (a) of this section.

§ 45.6 Duration of certificate.

(a) A commercial operator certificate issued or renewed under this Part shall remain in effect for a period of one year, unless sooner surrendered, revoked, or otherwise terminated by order of the Administrator. Upon suspension, revocation or other termination, it shall be returned to the Administrator.

(b) A commercial operator certificate issued or renewed under this part may be suspended or revoked by the Administrator for any cause which, at the time of suspension or revocation, would have been grounds for denying the holder of such certificate an application for a like certificate; or for any other cause which is grounds for suspension or revocation under section 609 of the Federal Aviation Act of 1958.

§ 45.7 Supplemental periodic financial report.

(a) Each holder of a commercial operator certificate shall, within 45 days after his certificate has been in effect for 4 months after the date of its original issuance, or renewal, under this revised part, submit a signed financial statement to the FAA which shows profit and loss for:

(1) The 4 month period after the date the certificate was issued or renewed, as the case may be; and

(2) The period immediately preceding the date of certificate issuance or renewal which was not covered by the preceding financial statement filed under § 45.3(b)(3).

(b) The applicant shall submit in support of the operating income shown on the Profit and Loss Statement required by paragraph (a) of this section a listing and brief description of the nature and scope of the contracts which gave rise to the operating income shown, including the names of the contracting parties, the date and duration of each such contract; and shall submit all of the other information required for original issuance of a certificate under § 45.3(b)(3).

§ 45.8 Waivers of financial information.

Upon application of an operator filed at least 30 days before a renewal application or supplemental periodic financial report is due, an authorized representative of the Administrator may waive submission of the financial information required in the application or or report, in whole or in part, if he finds, based on information as to the operator's financial standing, management, and type of operations, that the submission is not required in the public interest. Filing of an application does not automatically extend the time for submission of the information.

§ 45.9 Retention of contracts and amendments thereto.

Each holder of a commercial operator certificate shall retain a copy of each contract under which it provides services as a commercial operator, or in the case of oral contracts, a memorandum stating the elements of each such contract, and of each amendment to such a contract, for a period of one year after the date of the execution of that contract or change.

§ 45.10 Inspection authority.

An authorized representative of the Administrator shall be permitted at any time and place to make inspections or examinations (including inspections and examinations of financial books and records) to determine an operator's compliance with the requirements of the Federal Aviation Act of 1958, as amended, the Civil Air Regulations, the provisions of the operator's operating certificate, and the operations specifications, or to determine the operator's eligibility to continue to hold a certificate.

§ 45.11 Operating rules.

(a) Except as provided in paragraph (b) of this section, all persons subject to the provisions of this part shall, in the conduct of operations subject hereto, comply with the operating requirements of Part 42 of this subchapter, as heretofore or hereafter amended. Operating requirements shall be deemed to include requirements relating to aircraft and equipment, maintenance, flight crew, flight time limitations, flight operation, aircraft operating limitations, and related record-keeping and reporting requirements.

(b) Persons subject to the provisions of this part who conduct common carrier operations subject hereto in aircraft of more than 12,500 pounds maximum certificated take-off weight carrying passengers between points entirely within a State with the frequency described in § 45.5(a)(2) shall, in the conduct of all passenger operations between such points, comply with the requirements of Part 40 of this subchapter, as heretofore or hereafter amended, except §§ 40.1, 40.10, and 40.12 through 40.17, or with such other operating requirements as the Administrator finds will provide an appropriate level of safety for the operation.

§ 45.12 Certificate rules.

The certificate rules prescribed in §§ 42.5 through 42.9 of this subchapter shall be applicable to commercial operator certificates, except that for those persons complying with the certification requirements of Part 40 of this subchapter, §§ 40.11, and 40.18 shall apply in lieu of § 42.5.

NOTE: The reporting and/or record-keeping requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

[F.R. Doc. 63-2165; Filed, Feb. 28, 1963; 8:46 a.m.]