MS-158

FEDERAL AVIATION AGENCY
WASHINGTON 25, D.C.

December 7, 1962

CIVIL AIR REGULATIONS DRAFT RELEASE NO. 62-53

SUBJECT: Part 45 - Commercial Operator Certification and Operation Rules

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The Federal Aviation Agency has under consideration a proposal to amend Part 45 of the Civil Air Regulations to provide rules and procedures pertaining to the issuance, renewal, and duration of commercial operator certificates. The reasons therefor are set forth in the explanatory statement of the attached proposal which is being published in the Federal Register as a notice of proposed rule making.

Copies of the notice are being circulated to afford all interested persons an opportunity to submit comments. Due to the large number of comments we anticipate receiving, we will be unable to acknowledge receipt of each reply. You may be assured, however, that all comments will receive careful consideration.

It should be noted that comments must be submitted, in duplicate, by January 14, 1963, to the Docket Section of the Federal Aviation Agency, Room A-103, 1711 New York Avenue, N. W., Washington 25, D.C.

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Attachment

FEDERAL AVIATION AGENCY

[14 CFR Part 45]

[Regulatory Docket No.1517; Draft Release No.62-537

PART 45 - COMMERCIAL OPERATOR CERTIFICATION AND OPERATION RULES

NOTICE OF PROPOSED RULE MAKING

Certification, Application and Renewal Requirements

Notice is hereby given that the Federal Aviation Agency has under consideration a proposal to amend Part 45 of the Civil Air Regulations. The proposed amendments prescribe rules and procedures pertaining to the issuance, renewal, and duration of commercial operator certificates. The rules are designed to provide the Administrator with information pertaining to the management, control, and financial resources of an applicant for a commercial operator certificate which the Administrator needs to carry out his 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.

Interested persons may participate in the making of the proposed rules by submitting such written data, views, or arguments as they desire. Communications should be submitted in duplicate to the Docket Section of the Federal Aviation Agency, Room A-103, 1711 New York Avenue, N. W., Washington 25, D. C. All communications received on or before January 14, 1963, will be considered by the Administrator before taking action on the proposed rules. The proposals contained in this notice may be changed in the light of comments received, and if finally

promulgated will be subject to such changes as may be necessary for its recodification under the Agency's Recodification Program, as announced in Draft Release 61-25 (26 F.R. 10698).

A major part of the provisions of this proposal, as it applies to commercial operators, was set forth in a previous proposal as a revision of Part 42 in Draft Release No. 62-39, on August 22, 1962.[1/]

As indicated in the recent enactment of Public Law 87-528, the financial stability of persons engaged in the carriage of persons and cargo for compensation or hire is of increasing concern to the Congress.

Recent FAA enforcement actions involving the revocation of certain commercial operator certificates have revealed in large part 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.

1/ Civil Air Regulations Draft Release No. 62-39 entitled "Aircraft Certification and Operation Rules for Supplemental Air Carriers, Large Commercial Operators, and Certificated Route Air Carriers Engaging in Charter Flights or Other Special Services" was published as a notice of Proposed Rule Making in 27 F.R. 8356.

Furthermore, under the certification and recertification procedures presently applicable to commercial operators the Administrator is not provided with 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 as a commercial operator with the degree of safety required in the public interest.

Section 45.4(b)(2) of this proposal is substantively the same as the provision proposed in § 42.13(b)(2) of Draft Release No. 62-39.

Section 45.4(b)(2) of this proposal reads in part as follows:

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

(1) * * *

(2) That a person who has occupied a management position with, or exercised control with respect to, any other operator whose air carrier or commercial operator certificate has been revoked, will be in control of or have substantial ownership interest in the applicant's operation, * * *.

In order that this section may be effectively administered, it is also proposed to prescribe implementing provisions in § 45.3(b)(1) and (2) of the proposal which will require an applicant to disclose to the Administrator pertinent information regarding persons holding management positions and other persons in control of, or having an ownership interest in, the applicant.

It should be pointed out that requirements for the disclosure of control relationships with respect to Federally regulated businesses are quite common - as for example, in the case of the railroad, trucking, broadcasting and shipping industries subject to Federal regulations.

Section 45.3(b)(3) of this amendment (proposed § 42.12(d) in DR 62-39) requires a detailed financial statement to be submitted with an application for original issuance or renewal of a commercial operator certificate. These reports are required by the Administrator for the purpose of determining whether an applicant for the original issuance or renewal of a commercial operator certificate has sufficient financial resources to conduct its operations in air commerce with the degree of safety required in the public interest.

In order to insure that financial reports submitted will serve the purpose for which they are being required, new § 45.3(d) is incorporated in this proposal to require all financial statements filed with the FAA to be based on accounts prepared and maintained on an accrual basis in accordance with generally accepted accounting principles applied on a consistent basis.

It is also proposed in § 45.3(c) of this proposal to require an applicant for, or the holder of, a certificate to submit current information regarding changes in names and addresses submitted under § 45.3(b)(1) or (2), and material changes in the financial information submitted under § 45.3(b)(3). This information must be submitted within 10 days after the occurrence.

This proposal would establish a new § 45.9 and require each holder of a commercial operator certificate to submit to the FAA a semiannual financial report. The proposal would require a statement to be submitted covering the certificate holder's profit and loss for approximately the first 6 months following issuance or renewal of the certificate, and would require a listing and brief description of the nature and scope of the contracts which gave rise to the operating income shown. In addition, the certificate holder would be required to submit all of the other information required for original issuance of a certificate under § 45.3(b)(3).

The 6-month reporting requirement proposed would provide the Agency with up-to-date information approximately 6 months after issuance or renewal of a commercial operator certificate regarding the financial status of the certificate holder. Such a reporting requirement will not be unduly burdensome. Furthermore, it will enable the Agency to exercise the degree of continuing surveillance over a commercial operator's financial fitness which is reasonably necessary to provide adequately for safety in air commerce.

Although this proposal does not require that a commercial operator submit copies of its contracts to the Administrator, for administrative purposes Section 45.10 as proposed requires retention by the operator of each contract or contract amendment thereto (under which it conducts its operation) for a period of one year.

In consideration of the foregoing, it is proposed to amend Part 45 of the Civil Air Regulations as follows:

1. By amending § 45.3 to read as follows:

§ 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 prior to the date of intended operations, or to 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 his principal base of operations or has established such 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 beneficial owners thereof, 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 § 45.4(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 therein 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 § 45.4(b)(2).

(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.

(3) The following financial information:

(i) A Balance Sheet which shows assets, liabilities, and net worth, as of a date not exceeding 45 days prior to the date of application.

(ii) In the case of an application for renewal, a Profit and Loss Statement for a fiscal year ending at a date not more than 45 days prior to 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 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.

If the applicant's regular fiscal year for income tax purposes ends on a date more than 45 days prior to 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 45 days prior to the date of application.

(iii) An itemization of liabilities showing amounts, names and addresses of creditors, description of nature of indebtedness, date of incurrence of obligations, and due date of obligations.

(iv) An itemization of outstanding judgements showing amounts, names and addresses of creditors, and description of the nature of the claims.

(v) 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:

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

(b) estimated amount of operating and non-operating expenses by expense objective classification; and

(c) estimated profit or loss.

(vi) An estimate of anticipated cash needs covering the first 3 months of the proposed operation subsequent to the possible issuance or renewal of the certificate applied for which shows:

(a) acquisition of property and equipment,

(b) retirement of debt,

(c) additional working capital,

(d) operations (losses),

(e) other (explain),

(vii) An estimate of anticipated cash resources covering the first 3 months of the proposed operation subsequent to the possible issuance or renewal of the certificate applied for which shows:

(a) retirements of property,

(b) new debt,

(c) new equity,

(d) working capital reduction,

(e) operations (profits),

(f) depreciation and amortization,

(g) other(explain).

(viii) 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.

(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) The 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 names or addresses submitted to the Administrator under paragraph (b)(1) or (2) of this section; or

(2) A material change in the financial information submitted to the Administrator under paragraph (b)(3) of this section occurring while the application for

issuance or
certificate/renewal is pending before the Agency.

(d) All financial statements filed with the FAA under this Part of the Civil Air Regulations shall be based on accounts prepared and maintained on an accrual basis in accordance with generally accepted accounting principles applied on a consistent basis.

2. By redesignating §§ 45.4 and 45.5 as §§ 45.5 and 45.6 respectively, and by adding a new § 45.4 to read as follows:

§ 45.4 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 the Civil Air Regulations; or

(2) The provisions of Part 40 of the Civil Air Regulations (except §§ 40.1, 40.10 and 40.12 through 40.17) or such other certification 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 as a common carrier 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 has occupied a management position with, or exercised control with respect to, any other operator whose air carrier or commercial operator certificate has been revoked, will be in control of or have substantial ownership interest in the applicant's operation, or will be employed in any of the following management positions or their equivalent:

(i) General manager,

(ii) Director of operations,

(iii) Director of Maintenance and Airworthiness,

(iv) Chief Pilot,

(v) Director 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.

3. By amending § 45.2 and redesignated 45.5(b) by changing the words "section 45.3(a)" appearing therein to read "section 45.4(a)(2)".

4. By adding a new § 45.7 to read as follows:

§ 45.7 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 § 609 of the Federal Aviation Act of 1958.

5. By adding a new § 45.8 to read as follows:

§ 45.8 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 the operator's eligibility to continue to hold a certificate.

6. By adding a new § 45.9 to read as follows:

§ 45.9 Semi-annual financial report.

(a) Each holder of a commercial operator certificate shall, within 45 days after his certificate has been in effect for 6 months after the date of its original issuance or renewal, submit a signed financial statement to the FAA which shows profit and loss for:

(1) the 6-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) 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).

7. By adding a new § 45.10 to read as follows:

§ 45.10 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, 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.

(Secs. 313(a), 601, 607, 609; 72 Stat. 752, 775, 779; 49 U.S.C. 1354, 1421, 1427, 1429).

Administrator

Issued in Washington, D. C., on DEC 7 1962