

VOLUME 2 AIR OPERATOR AND AIR AGENCY CERTIFICATION AND APPLICATION PROCESS

CHAPTER 2 GENERAL INFORMATION FOR AIR CARRIER CERTIFICATION AND FRACTIONAL OWNERSHIP APPLICATION

Section 1 General Information

2-101. PURPOSE. This volume provides direction and guidance for the certification of applicants required to be certificated under Title 14 of the Code of Federal Regulations (14 CFR) part 121, 125, 133, 135, 137, 141, 142, 145, or 147. Title 14 CFR requires that an applicant for an air carrier certificate, operating certificate, or air agency certificate must submit their application in a form and manner prescribed by the Administrator, and contains any information required by the Administrator.

A. Fractional Ownership. This volume also provides direction and guidance for the fractional ownership program application process. Title 14 CFR part 91, subpart K (part 91K), requires an applicant for management specifications (MSpecs) to submit an application in a form and manner prescribed by the Administrator, and contain any information required by the Administrator. The process and kind of information that must be submitted for the application to be considered acceptable are contained herein.

NOTE: Since fractional ownership programs are not issued a certificate, the term “application process” is used to describe the process for issuance of MSpecs throughout volume 2.

B. Other Information. Section 2 provides guidance on determining the applicable regulatory requirements for air carriers, commercial operators, and fractional ownership programs. Section 3 provides direction and guidance on part 121/135 maintenance management personnel qualifications. Section 4 provides direction on evaluating the maintenance of a part 121/135.411(a)(2) operator. Section 5 addresses the evaluation of an applicant’s refueling procedures and facilities for parts 121, Operating Requirements: Domestic, Flag, and Supplemental Operations; 125, Certification and Operations: Airplanes Having a Seating Capacity of 20 or More Passengers or a Maximum Payload Capacity of 6,000 Pounds or More; and Rules Governing Persons on Board Such Aircraft, and 135, Operating Requirements: Commuter and On Demand Operations and Rules Governing Persons on Board Such Aircraft. Section 6 addresses inspections of hazardous materials or dangerous goods, the acceptance of hazardous materials or dangerous goods manuals, and the approval of hazardous materials or dangerous goods training. Section 7 contains guidance for obtaining International Civil Aviation Organization (ICAO) company designators and telephony designators (call signs) for those operators who request or are required to obtain designators.

2-102. BACKGROUND FOR PARTS 121 AND 135.

A. Part 119. Part 119, Certification: Air Carriers and Commercial Operators, establishes the general certification requirements for air carriers and commercial operators. It incorporated much of Special Federal Aviation Regulation (SFAR) 38-2 as subparts A and B (SFAR 38-2

terminated March 20, 1997), rescinded part 127 and provided the mechanism to transition the ten or more seat commuter air carriers from part 135 to part 121. It contains the following provisions:

- 1) Definitions appropriate to air operator certification
- 2) Roadmap to determine the appropriate operating rules (part 121, 125, or 135) for the kind of operations.
- 3) Common certification requirements for parts 121 and 135 (i.e. OpSpecs, Management Personnel)
- 4) Miscellaneous safety provisions common to parts 121 and 135 (i.e. wet leasing, emergency operations)

B. Part 91, Subpart K. Part 91K, General Operating and Flight Rules—Fractional Ownership Operations, establishes the application requirements for fractional ownership programs. These programs are operated as general aviation operations. However, the regulatory safety standards for fractional ownership programs are similar to air carrier standards; therefore, the guidance for the application process and oversight of these programs are contained in this order.

C. Summary. Table 2-4, Certification, and Table 2-5, Actions to Obtain DOT Authority, at the end of Volume 2, Chapter 2, Section 2, Air Carrier Commercial Operator Certificate Determinations, Types of Certificates, and Applicable Rules, summarize the certification requirements, define the kinds of operations, summarize the required Department of Transportation (DOT) authority (if any), and list the applicable 14 CFR parts.

2-103. DEFINITIONS. The following definitions pertain to air carriers and commercial operator certification and are found in 14 CFR part 1, Definitions and Abbreviations, and/or part 119 and applicable Department of Transportation (DOT) regulations. Definitions pertaining specifically to part 135 are found in chapter 4; and part 91K is found in chapter 5. Definitions pertaining to foreign air carrier operations are found in volume 12, International Aviation, chapters 2, 4, and 5.

A. Air Carrier. A person who undertakes directly by lease, or other arrangement, to engage in air transportation.

B. Air Commerce. Interstate, overseas, or foreign air commerce or the transportation of mail by aircraft or any operation or navigation of aircraft within the limits of any Federal airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce.

C. Air Transportation. Interstate, overseas, or foreign air transportation or the transportation of mail by aircraft.

D. All-Cargo Operation. Any operation for compensation or hire that is other than a passenger-carrying operation or, if passengers are carried, they are only those specified in part 121 section (§) 121.583(a) or 135.85

E. Certificate-Holding District Office (CHDO). The Flight Standards district office that has responsibility for administering the certificate and is charged with the overall inspection of the certificate holder's operations.

F. Commercial Operator. A person who, for compensation or hire, engages in the carriage by aircraft in air commerce of persons or property, other than as an air carrier or foreign air carrier or under the authority of part 375 of this title.

G. Common Carriage. Any operation for compensation or hire in which an operator holds itself out (by advertising or any other means), as willing to furnish transportation for any member of the public who seeks the services that the operator is providing.

H. Commuter Operation. Any scheduled operation conducted by any person operating one of the following types of aircraft with a frequency of operations of at least five round trips per week on at least one route between two or more points according to the published flight schedules

1) Airplanes, other than turbojet powered airplanes, having a maximum passenger seat configuration of 9 seats or less, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less; or

2) Rotorcraft.

I. Direct Air Carrier. A person who provides or offers to provide air transportation and who has control over the operational functions performed in providing that transportation.

J. Domestic Operation. Any scheduled operation conducted by any person operating an airplane described in subparagraph 1) of this definition at locations described in subparagraph 2 of this definition:

1) Airplanes:

a) Turbojet-powered airplanes;

b) Airplanes having a passenger seat configuration of more than nine passenger seats, excluding each crewmember seat; or

c) Airplanes having a payload capacity of more than 7,500 pounds.

2) Locations:

a) Between any point within the 48 contiguous States of the United States or the District of Columbia; or

b) Operations solely within the 48 contiguous States of the United States or the District of Columbia; or

c) Operations entirely within any State, territory, or possession of the United States; or

d) When specifically authorized by the Administrator, operations between any point within the 48 contiguous states of the United States or the District of Columbia and any point located outside the 48 contiguous states of the United States or the District of Columbia.

K. Flag Operation. Any scheduled operation conducted by any person operating any airplane described in subparagraph 1 of this definition at the locations described in subparagraph 2 of this definition:

1) Airplanes:

a) Turbojet-powered airplanes;

b) Airplanes having a passenger seat configuration of more than nine passenger seats, excluding each crewmember seat; or

c) Airplanes having a payload capacity of more than 7,500 pounds.

2) Locations:

a) Between any point within the State of Alaska or the State of Hawaii or any territory or possession of the United States and any point outside the state of Alaska or the state of Hawaii or any territory or possession of the United States, respectively; or

b) Between any point within the 48 contiguous states of the United States or the District of Columbia and any point outside the 48 contiguous states of the United States and the District of Columbia.

c) Between any point outside the United States and another point outside the United States.

L. Interstate Air Commerce. The carriage by aircraft of persons or property for compensation or hire, or the carriage of mail by aircraft, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation, in commerce between 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; or between places in the same state of the United States through the airspace over any place outside thereof; or between places in the same territory or possession of the United States, or the District of Columbia.

M. Interstate Air Transportation. 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:

- 1) Between a place in a state or the District of Columbia and another place in another state or the District of Columbia,
- 2) Between places in the same state through airspace over any place outside that state, or
- 3) Between places in the same possession of the United States.

N. Intrastate Air Transportation. The carriage of persons or property as a common carrier for compensation or hire, by turbojet-powered aircraft capable of carrying thirty or more persons, wholly within the same state of the United States.

O. Kind of Operation. One of the various operations a certificate holder is authorized to conduct, as specified in its operations specifications, i.e., domestic, flag, supplemental, commuter, or on-demand operations.

P. Noncommon Carriage. An aircraft operation for compensation or hire that does not involve a holding out to others.

Q. On-Demand Operation. Any operation for compensation or hire that is one of the following:

a) Passenger-carrying operations conducted as a public charter under part 380 of this title or any operations in which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative that are any of the following types of operations:

b) Common carriage operations conducted with airplanes, including turbojet-powered airplanes, having a passenger seat configuration of 30 seats or less, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less, except that operations using a specific airplane that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations are considered supplemental operations;

c) Noncommon or private carriage operations conducted with airplanes having a passenger seat configuration of less than 20 seats, excluding each crewmember seat, and a payload capacity of less than 6,000 pounds; or

d) Any rotorcraft operation.

2) Scheduled passenger-carrying operations conducted with one of the following types of aircraft with a frequency of operations of less than five round trips per week on at least one route between two or more points according to the published flight schedules:

a) Airplanes, other than turbojet powered airplanes, having a maximum passenger seat configuration of 9 seats or less, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less; or

b) Rotorcraft.

3) All-cargo operations conducted with airplanes having a payload capacity of 7,500 pounds or less, or with rotorcraft.

R. Overseas Air Commerce. The carriage by aircraft of persons or property for compensation or hire, or the carriage of mail by aircraft, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation, in commerce between 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; or between a place in a territory or possession of the United States, and a place in any other territory or possession of the United States.

S. Overseas Air Transportation. 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:

1) Between a place in a state or the District of Columbia and a place in a possession of the United States; or

2) Between a place in a possession of the United States and a place in another possession of the United States, whether that commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation

T. Passenger-Carrying Operation. Any aircraft operation carrying any person, unless the only persons on the aircraft are those identified in § 121.583(a) or 135.85, as applicable. An aircraft used in a passenger-carrying operation may also carry cargo or mail in addition to passengers.

U. Principal Base of Operations. The primary operating location of a certificate holder as established by the certificate holder.

V. Private Carriage. Private carriage does not involve offering or holding out by the operator through advertising or any other means.

W. Public Charter. A one-way or round-trip charter flight to be performed by one or more direct air carriers that is arranged and sponsored by a charter operator. See 14 CFR part 380 for more information.

X. Scheduled Operation. Any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial operator for which the certificate holder or its representative offers in advance the departure location, departure time, and arrival location. It does not include any passenger-carrying operation that is conducted as a public charter operation under part 380 of this title.

Y. Supplemental Operation. Any common carriage operation for compensation or hire conducted with any airplane described in subparagraph 1 of this definition that is a type of operation described in subparagraph 2 of this definition:

1) Airplanes:

- a) Having a passenger seat configuration of more than 30 seats, excluding each crewmember seat
- b) Having a payload capacity of more than 7,500 pounds
- c) Each propeller-powered airplane having a passenger seat configuration of more than 9 seats and less than 31 seats, excluding each crewmember seat, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations
- d) Each turbojet powered airplane having a passenger seat configuration of 1 or more and less than 31 seats, excluding each crewmember seat, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations

2) Types of operation:

- a) Operations for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative
- b) All-cargo operations
- c) Passenger-carrying public charter operations conducted under part 380 of this title.

Z. United States Air Carrier. A citizen of the United States who undertakes directly by lease, or other arrangement, to engage in air transportation.

AA. When Common Carriage is Not Involved or Operations Not Involving Common Carriage. This applies to any of the following:

- Noncommon carriage.
- Operations in which persons or cargo are transported without compensation or hire.
- Operations not involving the transportation of persons or cargo.
- Private carriage.

2-104. THE CERTIFICATION PROCESS (121/135) AND APPLICATION PROCESS (91K). Chapter 3 (part 121), chapter 4 (part 135), and chapter 5 (part 91k) describe the processes that both the applicant and the Federal Aviation Administration (FAA) must undergo so that the applicant complies with all certification and operational requirements before certificate or MSspecs issuance. The processes are designed so that an applicant's programs, systems, and

intended methods of compliance are thoroughly reviewed, evaluated, and tested. The processes, once completed, provide reasonable assurance that the applicant's infrastructure (programs, methods, and systems) will result in continued compliance. These processes consist of phases and gates that are individually described in chapters 3, 4, and 5. The descriptions of the document compliance phase and the demonstration and inspection phase do not provide detailed discussions of what constitutes acceptable or approvable programs, systems, or methods. Instead, these discussions present the types of activities that take place during these phases and emphasize the planning of required work functions. Detailed discussions on specific subject matter such as manuals, record keeping systems, training programs, and proving tests, are in volumes 3, 4, 5, and 6.

A. Job Aids. There are basic organizational job aids and/or schedule of events checklists available in chapters 4 and 5, as applicable. These aids should be used to assist in planning work functions during a certification/application process and as a checklist for items or events as they are accomplished. The schedule of events is designed to allow the applicant to provide a best estimate of when an event or item will occur or be ready for FAA inspection. Space is provided for the FAA to record revisions to the applicant's estimates or to record when the event or item actually occurred.

B. Process Overview. The flow chart at the end of the applicable chapters provides an overview of the certification/application process. Simultaneous use of the flow chart and narrative discussion will assist the inspector in understanding the process. The chart is particularly useful in determining whether the "Schedule of Events" is reasonable in terms of sequence, timeliness, and inspector resource availability. It also provides a perspective on how a particular event affects other events and is an important reference for planning various activities during the certification/application process.

2-105. CHANGES TO CERTIFICATE OR OPERATING AUTHORITY. Volume 3, chapter 34 provides direction and guidance on processing changes to an operator's certificate or operating authority. These changes can occur as a result of:

- Major Changes in Operating Authority
- Amendment, Surrender, Suspension, Revocation, and Replacement of Operating Certificates
- Mergers and Acquisitions

2-106. FOREIGN AIR CARRIERS OPERATING TO THE UNITED STATES AND FOREIGN OPERATIONS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE OUTSIDE THE UNITED STATES. The FAA does not issue certificates to foreign air carriers. However, 14 CFR part 129, section 129.11, requires foreign air carriers operating to the United States to hold FAA-issued operations specifications (OpSpecs). Volume 12, chapters 2, 4, and 5 provide direction and guidance on the issuance and management of foreign air carrier OpSpecs and contains information on an FAA inspector's authority and responsibilities with respect to foreign air carriers. It also contains information and guidance

about foreign operations of U.S.-registered aircraft outside the United States. Most of the information concerning foreign air carriers is found in this chapter.

2-107. CITIZENSHIP. (Title 49 of the United States Code (49 U.S.C.) sections 40102, 41101, 41102, and 41110)

A. Title 14 CFR Part 119, § 119.33. This section requires an air carrier or commercial operator to be a citizen of the United States. In addition, Federal statute requires that an air carrier must be a “citizen of the United States” before it may obtain a certificate of public convenience and necessity. The carrier must continue to be a citizen to maintain such authority. A citizen of the United States means:

- 1) An individual who is a citizen of the United States or one of its possessions; or
- 2) A partnership of which each member is such an individual; or
- 3) A corporation or association created or organized under the laws of the United States or of any state, territory, or possession of the United States, of which the president and 2/3 or more of the board of directors and other managing officers thereof are such individuals and in which at least 75% of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

B. Compliance. The DOT has the responsibility to determine compliance with the above-cited statutes. Contact the DOT Assistant General Counsel for International Law with questions and concerns.

C. Part 91, Subpart K. There is no citizenship requirement for part 91, subpart K fractional ownership program managers.

2-108. ENVIRONMENTAL ASSESSMENTS. All formal actions taken by FAA officials are subject to the National Environmental Policy Act of 1969 (NEPA), review except when excluded by Council on Environmental Quality (CEQ) regulations, or where such compliance would be inconsistent with statutory requirements. The CEQ regulations for implementation of the procedural provisions of NEPA (40 CFR parts 1500-1508) apply uniformly to and are binding upon all federal agencies, and direct each agency to adopt implementing procedures which relate the CEQ regulations to the specific needs of that agency’s programs and operating procedures.

A. NEPA-Covered Actions.

- Grants
- Loans
- Contracts
- Leases

- Construction
- Research activities
- Rulemaking and regulatory actions
- Certifications
- Licensing
- Permits
- Plans submitted to the FAA which require approval
- Legislation proposed by the FAA

B. Environmental Assessments. Since the certification of a new operator is a NEPA covered action, environmental assessments are required for all new 14 CFR part 121 and 135 operators.

C. Environmental Responsibilities. Associate Administrator for Aviation Safety (AVS) personnel are responsible for considering the environmental impacts on all actions emerging from its initiatives that require NEPA compliance. Flight Standards personnel must fulfill its environmental responsibilities as delegated to the Flight Standards Service (AFS).

NOTE: AFS is currently revising its national environmental policy and guidance material and developing streamlined procedures that will simplify and enhance the decision making process concerning AFS environmental responsibilities applying to formal Federal actions. This new policy information and guidance will be published in AFS handbooks as soon as it becomes available. In the interim, Inspectors will continue to use the guidance located in FAA Order 1050.1E and volume 11, chapter 6, section 3 of this order.

D. Definitions.

1) Environmental assessment (40 CFR § 1508.9):

a) Means a concise public document for which a Federal agency is responsible that serves to:

- Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.
- Aid an agency's compliance with the Act when no environmental impact statement is necessary.

- Facilitate preparation of a statement when one is necessary.

b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E) of NEPA, of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

2) Major Federal action (40 CFR § 1508.18) includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Actions include circumstances where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§§ 1506.8 and 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. section 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

b) Federal actions tend to fall within one of the following categories:

1. Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. section 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

2. Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.

3. Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

4. Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

RESERVED. Paragraphs 2-109 through 2-125.