

Two individual commenters recommend that "any scheduled operation with airplanes seating more than 9 passengers but less than 19 passengers" be operated under supplemental rules when that scheduled operation is a code-sharing arrangement with another part 121 scheduled carrier.

**FAA Response:** The so-called "frequency of operation" provision in the SFAR 38-2 definition of commuter air carrier does not exist for current part 121 operations. Affected commuters being upgraded to part 121 by this rule will be required to conduct all of their scheduled operations under part 121 regardless of the number of scheduled operations. However, the FAA has decided to retain the frequency of operations distinction for those operations conducted in airplanes with a passenger-seating configuration of 9 seats or less by revising the definitions of "commuter operation" and "on demand operation" in § 119.3. Therefore, scheduled operations in airplanes with a passenger-seating configuration of 9 or less (except turbojets) and conducted on a particular route with a frequency of fewer than five round trips per week (regardless of whether one or more airplanes are used on the route) would be conducted under the requirements applicable to on-demand operations.

The FAA believes that, because of the nature of the operation in which small turbojets, which are type certificated under part 25, are used (e.g., transoceanic, long range, international, etc.), they approximate the operations of larger air carriers. For example, part 135 contains no requirements for long-range navigational equipment or long-range fuel considerations. In an effort to increase the safety for passengers carried in those kinds of operations, the FAA has determined that any scheduled operations of turbojet airplanes should be conducted under part 121.

The FAA disagrees with commenters who suggest that commuter operations in code-sharing arrangements should be conducted under the rules for supplemental operations. Code-sharing, although it may affect passengers' perceptions, is a business/marketing arrangement and is not the basis for an FAA regulatory scheme. Scheduled operations in airplanes with 10 or more passenger seats should come under part 121 domestic or flag, as appropriate, not under supplemental rules.

The only operators who currently operate under part 135 on-demand rules that would be required to conduct their operations under part 121 scheduled rules are those who are included

because, as discussed above, part 121 does not contain a frequency of operation provision. If circumstances in the future necessitate a change to these rules, commenters will have an opportunity to comment on any proposed changes.

**Air Tour Industry Comments:** Several comments were received from air tour operators in the State of Nevada and the vicinity of the Grand Canyon. Some of these certificate holders would be affected by the rulemaking because they operate nontransport category airplanes of 10 to 19 seats and because they provide point-to-point service; for example, from Las Vegas to Grand Canyon Airport even though the flights are exclusively marketed as sightseeing and not point-to-point travel. Despite the fact that they technically fall into the category of a commuter operator, these commenters claim that they are more like an on-demand operator and that the proposed rule would penalize them for using larger, safer airplanes than their competitors. One of these commenters states that it does not fly city to city, but flies regularly scheduled flights that take off and land at the same airport. This operator states that, because of the nature of the operation and because of the proposed definition changes, it would be required to comply as a scheduled operator.

According to the commenters, since they have upgraded from 6- to 9-seat airplanes to 19-seat airplanes, they have been required to install ground proximity warning systems (GPWS), traffic alert and collision avoidance systems (TCAS), cockpit voice recorders (CVR), and flight data recorders (FDR), while their competitors have not been burdened by these costs. According to some of these commenters, this equipment is not beneficial in their operating environment because they typically fly in VFR conditions on short-range flights of an hour or less.

The commenters complain that if the proposed rule is implemented, they will be forced to replace the turboprop airplanes with smaller reciprocating-powered planes and will thereby lose some significant safety benefits such as the following:

- The two-pilot crew requirement with captains required to hold an Air Transport Pilot rating.
- Aircraft certificated to higher levels of aircraft performance.
- Aircraft maintenance procedures under the more comprehensive Continuous Airworthiness Maintenance Program.
- Safety equipment such as GPWS, TCAS, CVR, and weather radar.

One commenter lists some of the more "onerous" proposed requirements:

- "Ditchable" exits in case of water landings.
- Emergency floor path exits.
- Third attitude indicator (in aircraft flown in daylight under visual flight rules).
- Portable protective breathing equipment (PBE).

A commenter points out that the new aircraft performance requirements would limit maximum operating weight at Grand Canyon due to the high altitude.

According to these commenters, switching to smaller airplanes will increase air traffic congestion in the Grand Canyon area, decrease safety for passengers, and double or triple noise levels.

According to one commenter, these certificate holders do not have code-sharing partners and while these certificate holders sometimes provide point-to-point service, the flights are typically part of an all-inclusive tour package which includes ground transfers to Las Vegas hotels, sightseeing flights to the Grand Canyon, and motor coach tours of the Grand Canyon. This is totally unlike typical commuter operations.

Another commenter, however, says that at least one of the air tour operators does use code-sharing with a major carrier and that the offering of its scheduled flights is available by referencing airline computers all over the world.

Some of the commenters cite an NTSB report ("Safety of the Air Tour Industry in the United States," June 1, 1995) which states that the implementation of SFAR 50-2 has created a safe operating environment for air tour operators over the Grand Canyon. One commenter quotes NTSB as saying, "The level of safety of air tour operations could be improved by creating a national standard for air tour operations that contains definitions specific to the air tour industry and specific requirements, including unique operations specifications, to accommodate localized unique conditions, similar to the special conditions contained in SFAR 50-2."

One commenter states that his company recruits retired airline pilots to provide a high level of experience and stability to the flightcrews.

The Clark County Board of Aviation is concerned that the proposed rule could be devastating to individual certificate holders and adversely affect the vitality of the air tour industry in Southern Nevada.