

The Grand Canyon Air Tour Council states that the proposed expanded definition of "scheduled operations" is the problem and that the definition was changed with no satisfactory explanation or justification.

The Office of the Lieutenant Governor of Nevada testified at the public meeting held in Las Vegas that compliance would affect a "\$250 million industry that we have worked hard to develop."

**FAA Response:** The FAA does not agree that air tour operations are totally unlike commuter operations. Much of an air tour flight is like much of a commuter flight. If an air tour operator is conducting scheduled operations, as defined in § 119.3, in airplanes with a passenger-seating configuration of 10 or more, it must comply with part 121 domestic or flag requirements, as applicable. This includes operators who fly from and return to the same point on a scheduled basis.

The FAA agrees that certain aspects of air tour operations make them appear to be unlike commuter operations. For example, portions of air tour flights are at lower altitudes, typically over rugged and remote terrain, and often in airspace that is congested with other sightseeing aircraft. The FAA has begun an air tour industry project to study the implications of these differences to safety and to develop regulations, as necessary, to address specific features of air tour operations. If regulations are implemented as a result of the project, they would be in addition to current regulations, as is SFAR 50-2 which prescribes requirements for special conditions relating to flights over the Grand Canyon. The FAA project will consider the recent NTSB study cited by commenters. Because certain part 121 and 135 provisions are being recodified into part 119, SFAR 50-2 and SFAR 71 are being updated to conform to this rulemaking.

**Alaskan Comments:** Several comments were received from certificate holders in Alaska, Alaska government agencies, and others interested in how the proposal will affect Alaskan operations. Currently Alaskan certificate holders conducting scheduled operations in airplanes of 10 to 30 seats comply with part 135. The regulations allow them not to comply with flight time limitations for scheduled operations (§ 135.261(b) and (c)) and instead allow them to follow the regulations for on-demand operations. Alaskan certificate holders using airplanes of more than 30 seats must comply with part 121 supplemental requirements for nonscheduled flights and flag requirements for international and intra-Alaska scheduled operations.

Notice No. 95-5 proposed no exceptions for Alaska. Certificate holders whose operations fit the applicability for scheduled operations for airplanes of 10 or more seats would be required to comply with part 121 domestic requirements. International operations would follow flag requirements of part 121 and charter operations would follow supplemental requirements of part 121. Alaskan operators currently operating under part 121 flag rules would have to operate under part 121 domestic rules except for those operations that meet the definition of flag operations in proposed § 119.3.

The basic thrust of the comments is that the Alaska environment is unique and that requiring Alaskan commuter operators to comply with part 121 requirements would be devastating to certain certificate holders in Alaska and therefore to certain segments of air transportation. Furthermore commenters point out that most air transportation in Alaska is conducted in small reciprocating-powered airplanes with passenger-seating capacities of under 10 seats. Therefore, the proposed rule would not have a significant effect on air transportation safety in Alaska and would impose an economic burden on a few certificate holders who provide upgraded, i.e., safer, service. According to commenters, the accident rate for airplanes with under 10 seats is much higher than for turbine-powered airplanes with 19 seats. (Accident data analyzed by the FAA verifies that, unlike the rest of the nation, the part of the commuter fleet in Alaska involved in accidents contains a large proportion of under-10-seat aircraft.)

Peninsula Airways (Penair), as well as other commenters, states that characteristics of Alaska make commuter operations in the State unlike those in other parts of the country. In particular flights are conducted in the same time zone, pilots do not have long commutes to their jobs, flights are not usually conducted between 9 p.m. and 7 a.m., and operations subject to Air Traffic Control (ATC) are not in congested airspace. This rationale is primarily in defense of using the flight time limit requirements of part 135 nonscheduled operations.

Several commenters emphasize the absolute necessity of air travel in Alaska where many of the towns and villages are not accessible by road. They say that Alaskans are dependent on air transportation and the cost of that transportation must remain affordable. High cost items in the proposal, such as the possible need to upgrade airports, the use of a dispatch system, the various equipment requirements, and certain

performance requirements, would boost the fares to levels that many residents of Alaska could not afford. The State of Alaska Department of Transportation and Public Facilities states that "the proposed air carrier and airport regulations could devastate Alaska's heavily aviation dependent economy."

The Alaska Air Carriers Association (AACA) states that the proposed rule would end the growth of the 10- to 19-seat airplane and would increase fares by 67 to 100 percent. The proposed airport legislation is expected to cost the state \$100 million. AACA states that the proposed rule would directly affect only 15 certificate holders in Alaska. Two-thirds of the scheduled air carriers use aircraft with a seating capacity of 10 seats or less.

ERA Aviation, which currently operates under part 121 flag rules, objects to the proposal to operate as domestic/supplemental. It operates over 100 aircraft, fixed and rotary wing, nationally and internationally. The commenter states that for years Alaska part 121 operators have been operating under flag rules, both for scheduled and nonscheduled operations. This has allowed increased flexibility in crew scheduling, which is necessary because of the length of Alaska routes, the lack of facilities in remote locations, and the lack of road networks or other alternate forms of transportation to outlying communities. Section 119.21 would require these carriers to operate under domestic rules, which would decrease crew scheduling flexibility, add substantially to costs, derogate safety, and probably result in the elimination of vital air transportation services to some outlying communities. The commenter says there is no safety justification for such a change because Alaska part 121 operators have established an excellent safety record under existing rules. They say that, at the very least, Alaska carriers currently operating under flag rules should be allowed to continue to operate under flag rules for both scheduled and nonscheduled operations.

A part of the proposal that would have affected several Alaskan certificate holders is the proposal that single-engine airplanes with 10 passenger seats now operating scheduled flights under part 135 would in effect have to remove a seat in order to continue operating in scheduled service under part 135. Single-engine airplanes are ineligible for operation under part 121. The only 10-seat single-engine airplane model involved is the single-engine de Havilland DHC-3 Otter (not to be confused with the twin-engine de Havilland DHC-6 Twin Otter mentioned