

to demonstrate its ability to perform in accordance with part 121 and company procedures. However, Comair proposes that carriers currently conducting operations under part 121 and part 135 (split certificates) should not be required to conduct this demonstration. Carriers conducting part 121 and part 135 operations have previously proven their ability to conduct part 121 operations. If the requirement for dispatching is adopted, flight crewmembers will demonstrate their proficiency with the new system during their required line check.

RAA comments that proving flight hours should be reduced based on "experience and performance" factors. To facilitate a reduction in flight hours, the FAA should identify those specific procedures for which non-revenue proving flights would be required and specify a realistic number of flights or flight hours which would be sufficient to demonstrate those procedures.

ASA believes that the requirement for proving flights will result in an increase in both initial and recurring costs. United Express joins ASA in proposing that FAA recognize the experience level of air carriers operating under part 135 and permit proving tests to be conducted during revenue service. United Express further proposes that the required number of hours be reduced for those carriers currently using a dispatch system.

Big Sky Airlines recommends a waiver of the requirement for a proving test for airlines that have a good safety record and proven experience. The commenter justifies its recommendation on the basis of excessive and unnecessary burden and cost.

Commuter Air Technology requests clarification concerning which modifications to specific aircraft would require 100-hour initial proving tests.

FAA Response: Section 121.163 has two main parts. Paragraph (a) prohibits a carrier from operating an aircraft type in scheduled service that has never been used in scheduled service until it has flown 100 hours of proving flights. These hours are in addition to any aircraft certification tests. For the purposes of this rulemaking, the FAA recognizes that the current commuter fleet has established a sufficient history of operations and does not intend to require the 100 hours of proving flights for aircraft currently being operated by those carriers affected by this rulemaking. Paragraph (b) of § 121.163 requires 50 hours of tests for the carrier to show that not only can it operate and maintain the aircraft, but also that it has the ability to conduct a particular kind of operation (i.e., domestic or flag) in

compliance with the applicable regulatory standards.

The FAA agrees that carriers currently conducting operations under both part 121 and part 135 (split certificates) will be eligible to apply for a reduction of the number of hours required to conduct the demonstration required by paragraph (b). In regard to the comment that flight crewmembers that are new to part 121 operations will demonstrate their proficiency during accomplishment of a line check, the FAA does not agree that this could take the place of proving flights. The primary focus of proving flights is not simply to test the proficiency of flight crewmembers but to test the company's operational control procedures for the airplanes that will be operated in accordance with the requirements for a new kind of operation, i.e., flag or domestic. The FAA supports the idea that proving flight hours should be reduced based on "experience and performance" factors. The FAA has begun to identify those specific procedures for which proving flights would be required and to specify a realistic number of flights or flight hours which would be sufficient to demonstrate those procedures. This guidance to FAA inspectors will be provided in a revision to Order 8400.10.

The FAA agrees that proving tests will require an expenditure of the carrier's financial resources. Safety requires these proving tests to determine that an operator can conduct operations under part 121 safely, using new procedures, dispatches, etc. The FAA recognizes the experience level of air carriers operating under part 135 and, based on the carrier's experience with part 121, will provide FSDO inspectors with written guidance on approving deviations from the requirements of § 121.163. The FAA believes that proving tests are an essential part of the certification process and also provide the carrier with an opportunity to do some "dry-runs" before beginning revenue service under a completely new set of regulatory standards. The FAA's intent is to provide inspectors with the authority to provide deviations from the proving test requirements. FAA Headquarters will review each proposed reduction of proving test hours and will concur or not concur with the proposed number of hours for each affected commuter.

In response to Commuter Air Technology's request for clarification concerning which modifications to specific aircraft would require 100 hour initial proving tests, § 121.163(d) contains criteria for when a type of aircraft is considered to be materially altered in design.

VI.A.5. Subpart I—Airplane Performance Operating Limitations.

Subpart I contains airplane performance operating limitations that apply to all part 121 certificate holders; however, not every section in subpart I applies to every certificate holder. For example, §§ 121.175 through 121.187 apply to reciprocating engine-powered transport category airplanes and §§ 121.189 through 121.197 apply to turbine engine-powered transport category airplanes (with an exception for certain reciprocating-powered airplanes that have been converted to turbo-propeller-powered). Sections 121.199 through 121.205 apply to nontransport category airplanes.

In part 121 the term "nontransport category airplane" is currently used to refer to older airplanes like the Curtis C-46, that were type certificated before the transport category was established, i.e., the early 1940's. However, many airplanes type certificated over the last 20 years used by affected commuters (e.g., commuter category and SFAR 41 airplanes and predecessor categories), are also nontransport category. Therefore, the FAA proposed to delete the term "transport category" throughout subpart I and to include language where appropriate to except airplanes type certificated before January 1, 1965, that were not certificated in the transport category. This would have the effect of requiring airplanes type certificated in the commuter category or a commuter category predecessor to be operated under the performance operating limitations of §§ 121.175 through 121.197, as applicable.

Comments: ALPA states that all requirements of part 121 subpart I should be complied with by all turbo-propeller airplanes with a passenger capacity of 10 or more.

AACA concurs that airplanes with 10 to 19 seats should be required to comply with all of the proposed modifications (in Table 1 of Notice 95-5) except for part 121 performance and obstruction clearance and floor proximity lighting. (See later discussion of floor proximity lighting.)

Jetstream, RAA and ALPA support the overall proposals concerning the higher level of performance requirements. However, they join with Commuter Air Technology, Raytheon and an individual to point out that additional performance data/charts would need to be developed (for example: accelerate-stop and obstacle clearance data). RAA also recommends a 2-year time frame instead of the proposed 1-year performance compliance date.