



## Obtaining Authority to Conduct On-Demand Air Charter Operations Under Part 135

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In the July, 2003, issue of World Aircraft Sales, my colleague, John Craig Weller, discussed some of the costs and benefits of obtaining legal authority to conduct flight operations under Part 135 of the Federal Aviation Regulations (the "FAR"). (See "FAR Part 135. Is it for me?"; July, 2003, pg. \_\_\_\_). This month, we discuss the process of obtaining FAR Part 135 authority.

In order to conduct operations under FAR Part 135, an aircraft operator must obtain authority from both the Federal Aviation Administration ("FAA") and the U.S. Department of Transportation ("DOT"). FAA authority is generally referred to as "Safety Authority", while DOT authority is generally referred to as "Economic Authority".

Obtaining Economic Authority from the DOT is a fairly simple process. Applicants that intend to conduct only on-demand charter operations using aircraft having 60 or fewer seats ("small aircraft" in DOT parlance) are exempt from the vigorous DOT regulatory process that governs air carriers using larger aircraft. Thus, such an applicant may obtain Economic Authority simply by paying an \$8.00 fee and filing with the DOT an OST Form 4507 Air Taxi

Operator and Commuter Air Carrier Registration.

Obtaining Safety Authority from the FAA is a far more expensive and time consuming task. The process for obtaining Safety Authority may be broken down into the following five phases: (1) Pre-Application Phase, (2) Formal Application Phase, (3) Document Compliance Phase, (4) Demonstration and Inspection Phase, and (5) Certification Phase. Each of these phases is summarized below.

Pre-Application Phase. The Pre-Application Phase begins with a meeting with the local FAA Flight Standards District Office ("FSDO") to discuss the types of operations to be conducted by an applicant, and the application process itself. The applicant must also submit an FAA Form 8400-6 Pre-Application Statement of Intent ("PASI") to the FSDO during this meeting. The PASI is a fairly simple document containing only basic, general information about the applicant's anticipated operations. Following the meeting, the FSDO will assign a Certification Project Manager ("CPM") to work with the applicant throughout the certification process.

Formal Application Phase. The Formal Application Phase begins with the submission of a Formal Application Letter. The FSDO will require that the Formal Application Letter contain a variety of attachments, which may include, without limitation, (i) a Schedule of Events Attachment listing all the events, items, activities and programs that must be inspected by the FAA before certification; (ii) a Management Qualification Resume Attachment listing the qualifications of the person who will exercise operational and maintenance/inspection control of the applicant's operations and Aircraft; (iii) Documents of Purchase, Leases, Contracts, and/or Letters of Intent Attachments establishing that the applicant has obtained, or is in the process of obtaining, all aircraft, facilities and services necessary to conduct the intended flight operations; (iv) an Initial Compliance Statement Attachment listing all regulations under FAR Part 135 applicable to the applicant's proposed operations, and how each regulation will be satisfied; (v) a Company General Manuals Attachment containing instructions and information necessary to permit operations and maintenance personnel to perform their duties with a high degree of safety; and (vi) an Initial Company Training Curriculum Attachment containing training curricula for the applicant flight crew members.

Preparation of the Formal Application Letter and associated attachments is a very detailed and time consuming process. Submission of the Formal Application Letter to the FAA should be at least 90 days prior to the anticipated commencement of revenue operations.

After the FAA has conducted a preliminary review of the Formal Application Letter and found it reasonably complete, the applicant and the CPM will schedule a Formal Application Meeting at which the Formal Application Letter will be discussed and any omissions, deficiencies or open issues resolved. The discussions during this meeting will focus on the ability of the applicant and the FSDO to meet the schedule set forth in the Schedule of Events Attachment, and on the subsequent phases of the certification process.

Within a few days after the Formal Application Meeting, the CPM will formally accept or reject the Formal Application Letter.

Document Compliance Phase. During the Document Compliance Phase, the CPM will conduct a thorough review of all documents submitted to the FAA, and will work with the applicant to correct any deficiencies.

Demonstration and Inspection Phase. The Demonstration and Inspection Phase will likely begin prior to completion of the Document Compliance Phase as these phases generally tend to overlap. During the Demonstration and Inspection Phase, the applicant will be required to demonstrate its ability to comply with the applicable regulations and to conduct operations in a safe and efficient manner. The applicant will be required to operate as an on-demand charter air carrier for a period of time, which will include the conduct of actual flight operations, albeit without revenue passengers.

Certification Phase. During the Certification Phase, the CPM will

prepare and finalize the applicant's Air Carrier Certificate and Operations Specifications. The entire certification process will likely require at least several hundred hours of work, and take six months or more to complete. The FSDO will likely require that the bulk of the work be completed personally by the person or persons who will exercise operational control over the applicant's flight operations and aircraft. This requirement is intended to emphasize a key purpose of the certification process, which is to assure the FAA that such person or persons has/have the requisite

knowledge of the applicant's operations and the applicable regulations, documents, manuals, etc., to ensure that the applicant's flight operations are conducted in a safe and efficient manner. As a result of this requirement, an applicant cannot simply hire an attorney or a consultant to obtain a certificate on behalf of the applicant. An experienced aviation attorney may, however, assist in the endeavor and expedite the process by guiding an applicant through the process and providing assistance with document preparation.

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