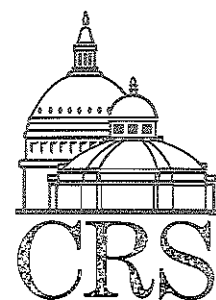


CRS Report for Congress

Commuter and Large Air Carriers: Is It Time For One Level of Safety?

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SUMMARY

Under current Federal Aviation Regulations, small aircraft with 30 or fewer seats used primarily by commuter airlines are regulated under one set of rules, while larger aircraft used by some regional and all major airlines are regulated under another. The Part 135 rules for small aircraft are in some ways less stringent than the Part 121 rules for larger aircraft.¹ In the 1960s when the rules were evolving, commuter airlines were only a small part of the industry and needed less stringent equipment and operating rules to stay viable. Today, commuter and regional airlines are the fastest growing segment of the industry, with small carriers rapidly replacing the major airlines in many small and medium markets. As a consequence, more and more passengers are exposed to the generally lower safety standards of Part 135. In view of the expected future growth in the commuter airline industry, many, including the National Transportation Safety Board, say it is time for "one level of safety" with commuter airlines held to the same safety standards as Part 121 carriers. The Department of Transportation and the Federal Aviation Administration have accepted this call and pledged quick rulemaking action to close the regulatory gap. A bill to achieve a single level of safety in commercial aviation has been introduced (H.R. 590).

Two issues of possible congressional concern are identified: 1. New procedures expected to result from the reform of the Federal regulatory process may delay commuter safety rulemaking and could make it easier for opponents to block new rules. 2. The cost of more stringent safety rules could force some commuter airlines to reduce service or to go out of business. In turn, service to some small communities could be reduced or lost.

As the "one level of safety" initiative moves forward, congressional oversight may be needed both to keep the process moving and to ensure that new safety rules for commuter airlines are commensurate with the safety risk they pose.

¹Code of Federal Regulations. Title 14, Part 135, Air Taxi Operators and Commercial Operators; and Title 14, Part 121, Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft.

COMMUTER AND LARGE AIR CARRIERS: IS IT TIME FOR ONE LEVEL OF SAFETY?

INTRODUCTION

Public concerns about commuter airline safety rose in 1994 following five fatal commuter or regional airline accidents in a one-year span. The record has drawn attention to the need for additional safety improvements in areas such as pilot training and experience, flight crew coordination, aircraft maintenance and inspection, airline management oversight, and FAA surveillance. To address these issues, the National Transportation Safety Board (NTSB) has called on the Federal Aviation Administration (FAA) to hold commuter airlines to the same basic safety standards as large air carriers. The Department of Transportation (DOT) and the FAA have accepted this call and pledged quick rulemaking action to bring commuter aircraft safety regulations up to the standards of large airliners. A bill to achieve uniformity in the regulation of large and small carriers was introduced on January 19, 1995, and referred to the House Committee on Transportation and Infrastructure (H.R. 590).

THE COMMUTER AIRLINE INDUSTRY

The reason for separate Federal rules covering commuter airlines and large air carriers is rooted in economics and the early makeup of the airline industry. Regulations for small aircraft were developed in the 1960s and primarily aimed at unscheduled, "on-demand" air taxi operators. Commuter airlines were not a significant part of the industry. Service to small communities was provided by large carriers and subsidized by passengers flying between major cities. Because of their limited role, commuter airlines were lumped into the "miscellaneous" Part 135 category used to regulate unscheduled air taxis.

Following the airline industry's deregulation in 1978, the major carriers largely abandoned service to smaller, short-haul markets, concentrating instead on the more lucrative long-distance, major city pairs. Commuter and regional carriers quickly moved in to fill the void, and today nearly 70 percent of the U.S. communities having scheduled air service depend exclusively on these airlines as the originating or terminating source of transportation.

The size and sophistication of commuter aircraft, and the size and number of commuter airlines, has changed dramatically since deregulation. Whereas the earlier fleet consisted primarily of smaller, general aviation-type aircraft, today's fleet is made up of increasingly larger, more sophisticated aircraft. The average

number of seats per aircraft has grown from 11.9 in 1980 to 23.4 in 1992, and the commuter-regional fleet of 2,200 aircraft now includes over 500 aircraft with more than 30 seats operating under Part 121 rules. Due to market forces, the number of commuter-regional airlines in the United States has dropped from about 250 in 1978, to approximately 140 today. Of these, the ten largest carry half of the commuter traffic and the 50 largest carry 98 percent.

Commuter-regional airlines have burgeoned into a significant segment of the airline industry. In 1993, they handled 53 million enplanements, or 12 percent of the total passenger trips in this country. The major carriers have come to rely on these carriers for feeds to and from smaller communities. The largest commuter airlines all have affiliations with major airlines through outright ownership, substantial investment, or strong marketing or scheduling ties. A typical commuter passenger flies on an aircraft with the logo and livery of a large airline, and his or her ticket is marketed and sold through a computer reservation system of a major airline.

AVIATION REGULATION

SELECTED DIFFERENCES IN PART 135 AND PART 121 STANDARDS¹

1. **Flight Crew Training.** Compared to Part 121 training regulations, Part 135 regulations do not provide a balanced mix of training and checking. Part 121 regulations stipulate a set number of hours that a pilot must receive for ground, flight and recurrent training. Under Part 135, training program hours are not specified; pilots are trained to proficiency, which means that the only requirement is for successful completion of the applicable test or check flight. Part 121 allows pilot training in flight simulators; Part 135 has no counterpart, although simulator training may be conducted through an exemption granted by the FAA. Part 121 requires recurrent training and a proficiency check every six months. Part 135 requires only a proficiency check every six months and has no firm requirement for recurrent training.
2. **Flight and Duty Time Limitations.** Both Parts 135 and 121 establish the maximum number of hours pilots can be on duty at a single stretch, a week, a month, and a year. Part 135 generally permits more flying than is permitted under Part 121.
3. **Flight Crew Experience.** While not a regulatory issue, experience levels of commuter pilots are on average lower than air carrier pilots. Commuters are often the starting point in the career of a pilot, and a place to gain the experience required to meet the employment standards of a large carrier.
4. **Dispatch Requirements.** Part 121 flights operate under the joint authority of the pilot and a licensed flight dispatcher who assists the pilot in planning the flight. Once a flight has begun, the dispatcher stays in radio contact with the aircraft to advise the pilot of weather and other factors that may affect the outcome of the flight. Part 135 does not require dispatchers. Responsibility for flight planning, weather briefings and other aspects of the flight rests solely on the commuter pilot. Consequently, commuter flights can occur with the pilot not being fully apprised of all of the conditions that could affect the flight's safety.
5. **Maintenance.** The maintenance requirements under Part 121 and 135 have slight differences. A chief inspector is a required management position under Part 121 but not under Part 135. Part 121 limits the duty time for maintenance personnel to 24 consecutive hours off duty during any 7 consecutive days of duty. There are no duty limits for Part 135 maintenance personnel.
6. **Aircraft Deicing.** Part 121 airlines must (1) have training programs for employees who apply deicing fluids, (2) identify responsible employees and their duties, and (3) establish standards for implementing deicing procedures. For Part 135, only the flight crew is required to be trained in deicing, not the ground crew.

¹For more information on Part 135 and Part 121 standards, see: U.S. Congress. House. Committee on Public Works and Transportation. Subcommittee on Aviation. Adequacy of commuter airline safety regulations. Hearings, 103d Cong., 2nd Sess., Feb. 9, 1994. 166 p.

Non-military aviation is regulated by the FAA in accordance with the Federal Aviation Regulations (FARs). Every commuter, regional and major airline is certificated by the FAA to be in compliance with the FARs applicable to its operation. The FARs set out the "minimum" requirements an airline must meet to ensure safe operations. Although they are not required to do so, most airlines, including commuters, operate above these minimums, giving the aviation system an extra "margin" of safety.

Far from being static, the FARs are constantly being changed to meet new demands in aviation. The FAA, with the concurrence of DOT and other agencies, revises the code frequently through a rule making procedure. In anticipation of future growth in the commuter airline industry as a result of airline deregulation, the FAA totally rewrote Part 135 in 1978. The revision dramatically increased the safety requirements for commuter airlines, helping to bridge the gap between Part 135 and Part 121 regulations. Each commuter airline was then recertificated by the FAA to assure that it met the upgraded standards.

Although the 1978 upgrade raised the level of safety in commuter airlines, it did not raise it to the same level enjoyed by passengers and flight crews of the Part 121 carriers. To further close the gap, the FAA has issued approximately 40 new Part 135 rule changes since 1978. Among these are requirements for: deicing procedures and training, ground proximity warning systems, exit seating, collision avoidance systems, minimum equipment list standards, drug and alcohol testing, and cockpit voice and flight data recorders. It should be noted, however, that while each new requirement has enhanced commuter airline safety, the new standards are not in every case equivalent to the Part 121 counterpart.

COMMUTER SAFETY STATISTICS

The Part 135 rule changes instituted by the FAA over the past 15 years have been an important factor in the long-term improvement in the commuter safety record. In 1978, scheduled commuter airlines had one fatal accident in every 92,000 hours of aircraft operation; last year, they had one fatal accident in every 775,000 hours flown - more than an 8-fold improvement. Under any measure, and despite occasional spikes in a given year that occur due to the generally low numbers of accidents overall, the commuter safety record has shown steady improvement. On average throughout the 1980s and 1990s, the commuter fatal accident rate has been about twice that of the large carriers. In 1994, the fatal accident rate for Part 135 scheduled airlines declined for the third straight year. Despite this, the rate was four times higher than the large air carrier rate.² Five commuter and regional airline accidents in 1994 and late 1993 have heightened concerns about the safety of the commuter airline industry and the adequacy of Part 135 regulations.

²In 1994, Part 121 carriers had one fatal accident in every 3,305,000 hours flown.

ONE LEVEL OF SAFETY

The NTSB, among other aviation safety groups, believes that the higher accident rate for commuter airlines can be traced in part to the regulatory differences between Part 135 and Part 121. In November 1994, the Board released a commuter safety study which called on the FAA to revise the FARs such that all scheduled passenger service conducted in aircraft with 10 or more seats be conducted in accordance with Part 121 of the FARs, or its functional equivalent, wherever possible.³ In all, it made 10 recommendations covering the areas of aircraft dispatch, pilot flight and duty time, pilot training, training centers, flight simulators, flight attendant training, internal safety programs, qualifications and training of FAA air carrier inspectors, airport standards for commuter airline service, and oversight of commuter airlines by code-sharing major carriers.

In announcing its recommendations, the Board stated that airline safety should be based on the characteristics of the flight operations, not the seating capacity of the aircraft. It also said that passengers on commuter airlines should be afforded the same regulatory safety protection granted to passengers flying on Part 121 airlines. The Board indicated that the recommended changes, in combination with the FAA's anticipated revisions of the commuter flight crew training rules, will raise the safety of commuter airline operations to a level equivalent to Part 121 standards.

DOT AND FAA ACTIONS

On December 13, 1994, an American Eagle commuter plane crashed while attempting to land at Raleigh-Durham International Airport, killing 15 of the 20 people on board. It was the fifth commercial aviation accident in the United States in 1994 and the fourth involving a commuter or regional airline. In response to this and the other accidents, DOT ordered an unusually tight 100-day deadline to begin rulemaking to require commuter airlines to maintain the same safety and operational standards as the major carriers. Central to this goal is a new rule - already in the pipeline - to require pilots of Part 135 aircraft to meet the same proficiency training standards, and to undergo the same crew coordination training, as pilots of larger aircraft.⁴ The FAA is also finalizing new rules to reduce pilot flight and duty time and to prevent two inexperienced pilots from being assigned to the same flight. And it is considering a new rule to require commuter airlines to employ licensed dispatchers to help flight crews prepare for and carry out safe flights.

³Commuter Airline Safety. National Transportation Safety Board. NTSB/SS-94/02. [Nov.] 1994.

⁴Air carrier and commercial operator training programs. Notice of Proposed Rulemaking. FAA, DOT. Federal Register, Dec. 13, 1994. p. 64272.

In addition to NTSB's recommendations, which dealt with operating standards, the FAA will examine differences in certification standards for small and large aircraft. Small aircraft with 19 or fewer seats are certified under Part 23 of the FARs; aircraft with 20 or more seats must meet the more stringent Part 25. By the end of its 100-day review of commuter safety regulations, the FAA will issue notices of proposed rulemaking (NPRMs) to begin the process of bringing Part 135 into regulatory uniformity with Part 121. The NPRMs will be followed by a public comment period of perhaps 60 to 90 days. Final rules might be expected by the end of 1995 to take effect beginning in 1996. Besides the regulatory review and upgrade, DOT ordered a safety-procedures audit of all regional airlines and convened an airline summit on January 9 and 10, 1995, to determine what can be done to improve airline safety. The recommendations of the summit were released on February 9, 1995, in the form of a list of 173 safety actions designed to enhance commercial air safety across the board. The actions address a wide range of safety issues, including data collection, training of flight and maintenance staff, and technology development. Some are new projects, while others are existing programs which have been accelerated. Deadlines for implementation have been set, with over 100 initiatives scheduled for completion by September 30, 1995.

Aviation safety will be further enhanced in 1995 when the FAA adds 300 new inspectors to its ranks, bringing the total inspector work force to about 2,200. This number is well above the low water mark of about 1,400 inspectors reached in the mid 1980s when the FAA work force was being cut. And, in a reorganization announced in November 1994, the agency created a new top-level system safety office, reporting directly to the administrator. The new office will monitor all aspects of aviation safety in order to detect potentially dangerous safety trends as they develop.

POLICY ISSUES

The Economic Effects of Higher Regulatory Standards. Regulatory uniformity between Part 135 and Part 121 operations is not without economic costs that potentially could ground some aircraft and put some commuter airlines out of business. Any one rule-change might not be enough to close a small airline, but a number of changes, even if phased in over several years, is cause for concern in the commuter airline industry.

With any regulatory change, the FAA gives consideration to how much the new regulation will cost the industry. The agency is required to do a cost-benefit analysis for every "major" rule it proposes and may not propose a rule unless the potential benefit outweighs the costs.⁵ Even in safety matters, the agency must show that a rule-change will have a positive economic benefit in terms of lives saved. It assigns an economic value to the lives that potentially

⁵Executive Order 12291, issued on Feb. 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society for the regulatory change outweigh the potential costs.

will be saved and, in the case of a requirement for new equipment, weighs the human life value against the installed cost and higher operating cost of the equipment.

An issue of potential interest to the 104th Congress is: how much more regulation can or should be done to raise the level of safety of Part 135 airline operations. The safety of these airlines is in question now, but commuter airlines registered their third consecutive annual decline in accident rates in 1994 and are about an order of magnitude safer than they were 12 to 15 years ago.⁶ Given their current level of safety, it may be difficult for the FAA to justify, on a cost basis, new equipment requirements or costly operational changes. Even if a rule is found to have a positive cost benefit on commuter operations as a whole, the expense could cause individual commuter airlines to cut back on service, to eliminate some aircraft, or perhaps even to fail. In turn, some communities could have their service reduced or could lose service altogether.

Regulatory reform. Ongoing congressional efforts to reduce the burden of Government regulation on business and the public may impact FAA efforts to raise the safety standards of commuter airlines. Regulatory reform is expected to impose new requirements on Federal regulators to ensure that the cost and risks of new regulations do not outweigh their benefit. To bring the safety standards of commuter airlines up to the large carriers, the FAA will have to impose new, and in some cases, costly regulations on commuter carriers. As a result of regulatory reform, the agency may have to perform cost-benefit and risk analyses on new regulations which are expected to result in at least a \$50 million cost, or if the Office of Management and Budget determines that further analysis is needed.⁷ Under existing guidelines, only "major" regulations costing at least \$100 million have to be so analyzed.

A potential obstacle to commuter airline regulatory reform was averted when the House of Representatives approved a last-minute, technical change in the Regulatory Transition Act of 1995 (H.R. 450). Prior to its passage, there was growing concern that the bill's one-year moratorium on rulemaking would delay the rule changes needed to bring commuter airlines up to the safety level of large carriers. The bill exempted health and safety rules from the moratorium but only when an "imminent threat" to safety existed. After two days of debate in the House of Representatives, a dispute still lingered over whether rulemaking in such areas as commuter aviation regulation would be permitted since it would be difficult to prove the existence of an imminent

⁶National Transportation Safety Board. News [release]. Sb-95-03. Airline fatalities for 1994 climbed to five-year high. Jan. 19, 1995.

⁷See: Debate on H.R. 926, the Regulatory Reform and Relief Act of 1995, Reed amendment to raise the threshold for a "major" rule from \$50 million to \$100 million. Congressional Record, Mar. 1, 1995: H2433.

threat to safety. The House put the matter to rest when it approved a technical amendment exempting aviation safety rulemaking from the moratorium.⁸

The most likely effect of regulatory reform on new commuter safety rules is delay. Rule changes that have merit and are cost-effective should still go forward, but regulators may have to spend more time justifying them. In addition, provisions allowing peer and judicial reviews, if enacted, could expose new rules to greater scrutiny and challenge, making it easier for individuals or interest groups to delay or block rules which they oppose.

FAA Privatization Initiative. Sometime in 1995 or 1996, Congress may be asked to consider an Administration proposal to take the air traffic control system out of the FAA and put it under the control of a wholly owned Government corporation. The proposal was first offered in the 103d Congress and resubmitted to the 104th Congress as part of the President's Fiscal Year 1996 budget. Under the proposal, the corporation would operate the air traffic control system and may also be charged with its modernization. The FAA would retain all of its current regulatory and aviation safety oversight responsibilities and would have newly defined responsibilities with respect to oversight of the corporation. At this time, there is no indication that the proposal to turn the air traffic control system over to a semi-private corporation will have any effect on FAA's airline regulation function. Rulemaking to bring commuter airlines up to the safety standards of the major carriers should continue apace in the FAA regardless of the outcome of air traffic control corporation proposal.

In conclusion, the FAA is facing a possible dilemma: it is under pressure to restore public confidence in commuter flying by making commuter airlines follow the same rules as the major carriers, but if it pushes too hard the cost of more stringent safety rules could put some airlines out of business and cause some communities to lose service. Such an adverse impact would be contrary to the agency's dual mandate, which is to promote safety *and* foster the development of air commerce.⁹ Regulatory reform may make it more difficult for the FAA to carry out rulemaking needed to bring commuter airlines up to air carrier safety standards. Not only might the agency have a harder time justifying new rules, but new procedures for peer and judicial review may make it easier for opponents to block rules before they can be implemented. The commuter airline industry generally supports uniform safety standards, but opposition is likely from individual airlines threatened by rules that could put them out of business. As the "one level of safety" initiative moves forward, congressional oversight may be needed both to keep the process moving and to ensure that any new safety rules for commuter airlines are commensurate with the safety risk these airlines pose.

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⁸Authorizing the Clerk to make a certain correction in engrossment of H.R. 450. A technical amendment offered by Representative Norman Mineta. Congressional Record, Feb. 24, 1995: H2210.

⁹Public Law 85-726.