



JONES DAY  
**COMMENTARY**

## PENDING DEADLINE FOR AIRLINE TRANSPORT PILOT CERTIFICATES MAY PLACE U.S. CARRIERS IN A LURCH

In the Airline Safety and Federal Aviation Administration Extension Act of 2010, Pub. L. 111-216 (August 1, 2010), Congress established new requirements for crewmember screening and qualification and for airline transport pilot (“ATP”) certification. Section 216(a)(2)(B) of the act requires that by August 2, 2013, all flight crewmembers operating under Part 121 of the Federal Aviation Regulations, 14 CFR Part 121, have both an ATP certificate and an appropriate amount of multi-engine aircraft flight experience.<sup>1</sup>

Carriers have assumed that the Federal Aviation Administration (“FAA”) would issue interpretative regulations that would mitigate some of the requirements, and the FAA has prepared a final rule on *Pilot Certification and Qualification Requirements for Air Carrier Operations* that was recently sent to the Department of Transportation (“DOT”) for review. Based on the normal timeline for review of such regulations by DOT and the Office of Management and Budget (“OMB”), it does not appear that the

new rule will be issued prior to the August 2 deadline. We recommend that carriers take steps now to prepare for meeting the statutory requirements by August 2. Otherwise, carriers may find that some of their pilots will be unable to fly, resulting in potential service disruptions.

Currently, the pilot in command, generally known as the PIC or captain, of aircraft operating under Part 121 are required to have an ATP certificate and type rating for the aircraft flown.<sup>2</sup> There is no specific requirement for multi-engine flight experience.<sup>3</sup> Pilots serving as second in command, generally known as the SIC or first officer, are currently required only to have a commercial pilot certificate with appropriate category and class ratings and an instrument rating, not an ATP certificate. The Administrator of the FAA has the authority to determine the appropriate multi-engine experience; he has no discretion to waive or otherwise postpone the requirement for an ATP certificate.

The FAA's final rule will undoubtedly contain changes compared to the proposed regulations outlined in its notice of proposed rulemaking ("NPRM") in February 2012 (see 77 Fed. Reg. 12374 (February 29, 2012)), but carriers need to assume that the existing requirements for an ATP certificate will apply to all pilots flying in Part 121 operations on August 2. The DOT schedules 30 days for its review of FAA regulations, but that time frame is routinely exceeded, and even if DOT cleared the rule within 30 days, OMB is allowed 90 days to conduct a review required under Executive Order 12,866. The effect of sequestration on agency staffing could delay these reviews longer than usual.

Thus, carriers need to plan now for the ATP certificate requirement to take effect without the benefit of any regulatory changes on August 2. Effective that date, all pilots, whether serving as captain or first officer, must have at least 1,500 hours of flight time and a first-class medical certificate or they will be grounded from Part 121 operations.

Currently, pilots serving as second in command are required only to have between 190 and 250 flight hours and a second-class medical certificate. It is likely that the final rule will provide for issuance of a restricted ATP certificate based upon academic or military training as proposed in the NPRM. However, the NPRM contemplated credit for academic training only if the pilot had a bachelor's degree with an aviation major from an accredited four-year post-secondary institution, a requirement that many viewed as overly rigid. If the FAA decides to relax these requirements, it is likely that the FAA will need to establish some type of evaluation process to ensure that pilots taking credit can demonstrate that they meet the criteria set forth in the final rule. Thus, carriers should not assume that their current pilots will be able to take advantage of these provisions as soon as the final rule is published.

Because most major carriers already require that all pilots have an ATP certificate, the immediate impact will be on carriers that permit first officers to fly with a second-class medical certificate or regional carriers that do not currently impose the ATP certificate requirements on first officers.

Regional carriers are more likely to have first officers with only a commercial pilot certificate and thus to experience an immediate staffing impact. As the major carriers hire pilots currently employed by regional carriers, those staffing issues may be compounded as more experienced pilots move to the larger carriers. Because major carriers typically rely heavily on feed from regional carriers, the potential shortage of pilots at the regional carriers could have an impact on the schedules of major carriers.

For new hiring, many experts are predicting a shortage of qualified pilots. Because the age limit for commercial pilots was raised from 60 to 65 in December 2007, carriers are just now beginning to see large numbers of retirements by pilots who have been allowed to work an additional five years. This wave of retirements began in December 2012, and the new ATP certificate requirements will place an even greater strain on hiring.

While the Administrator of the FAA has discretion to defer requirements in some areas, and it is unlikely that the FAA will immediately require all pilots to have specific multi-engine flight experience because of the delay in publication of the final rule, carriers should nonetheless take steps now to prepare for August 2.

First, to the extent they have pilots in their workforce who do not have ATP certificates, they need to ensure that these pilots have the required certificate before August 2, and meeting the training and experience requirements for such pilots may require some adjustments to schedules for other pilots. Otherwise, the carriers will face immediate pilot shortages as pilots without the required certificates are grounded.

Second, in addition to ensuring that all pilots have the requisite 1,500 flight hours by August 2, carriers need to ensure that all pilots have or obtain a first-class medical certificate. This, in turn, will require that medical appointments be scheduled sufficiently early to allow for any delays associated with a shortage of medical examiners. The FAA may ultimately make some allowance for SICs to have a second-class medical certificate, but the initial assumption must be that a first-class medical certificate will be required.

Third, carriers should review their agreements with regional carriers to make sure that their regional partners are also taking all necessary steps to ensure an adequate supply of qualified pilots. All of these actions will take time and may require adjustments to collective bargaining agreements and other contracts.

Finally, if a carrier believes that any of its pilots will be unable to meet the new requirements, it should begin now to assess its options under the applicable collective bargaining agreement, if any. The issues will include whether the carrier may terminate the pilot's employment, place the pilot on some form of leave until the pilot obtains the required qualifications, or, if the pilot is unable to obtain the required medical certificate, whether the pilot is entitled to disability benefits under the agreement. Because the carrier's options will turn on both the provisions of the particular collective bargaining agreement and past practice, it is impossible to generalize on a carrier's options, but carriers will be well served by considering the issues in advance and, potentially, seeking to reach an agreement with the collective bargaining representative on how to deal with the issues.

## LAWYER CONTACTS

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## ENDNOTES

- 1 The other statutory requirements are not subject to the August 2, 2013 statutory compliance date. Jones Day intends to provide guidance on these requirements, some of which will have an impact on all operators who require their pilots to have an ATP certificate, once the final rule has been published.
- 2 There are several requirements that a pilot must meet before the FAA will issue an ATP certificate. The most significant provisions for the purpose of the act are that the pilot hold at least a commercial pilot certificate with an instrument rating, meet certain military experience requirements, or hold the appropriate foreign commercial license; pass the requisite knowledge and practical tests; and meet the requisite aeronautical experience requirements of at least 1,500 hours of total time as a pilot, consisting of at least 500 hours of cross-country flight time, 100 hours of night flight time, 75 hours of instrument flight time, and 250 hours of flight time performing the duties of a pilot in command. 14 CFR 61.153.
- 3 The FAA will specify the "appropriate amount of multi-engine aircraft flight experience" in its final rule.

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