

CHAPTER 125. MONITORING PART 121 OPERATORS BEFORE, DURING, AND AFTER LABOR DISPUTE, STRIKE, OR BANKRUPTCY

SECTION 1. BACKGROUND

1. REPORTING AND TRACKING CODES.

A. Air Transportation Oversight System (ATOS) Reporting. All surveillance elements are to be documented in accordance with (IAW) appendix 6 of Federal Aviation Administration (FAA) Order 8400.10, Air Transportation Operations Inspector's Handbook.

B. Non-ATOS Air Carrier Reporting. All inspections activities are to be documented IAW the Program Tracking and Reporting Subsystem (PTRS) procedures manual (PPM).

3. OBJECTIVE. This chapter provides information and guidance to be used when conducting surveillance of an operator before, during, and after a labor dispute, strike, or bankruptcy. Air carriers experiencing labor issues may be unable to meet financial obligations, and filing for bankruptcy protection may curtail certain necessary maintenance and operational activities, thereby adversely impacting safety. During these periods, the Flight Standards Service (AFS) may determine that a modification to the existing surveillance plan is necessary. In any case, the FAA must ensure that public safety is not jeopardized.

5. GENERAL. Safety is a concern when any of the above situations cause disruption or inconsistency in an air carrier's operation. The operator has the ultimate responsibility for recognizing current or potential financial problems that could adversely affect safe operations. The FAA and operator should take a proactive role in these matters, going beyond reacting to events. The operator should inform the certificate-holding district office (CHDO) of relevant events leading to a labor dispute, strike, or bankruptcy, and any associated operational impacts. The operator should immediately inform the CHDO of any significant safety-related findings identified through its monitoring and oversight programs. The CHDO may learn of events leading to a labor dispute, strike, or bankruptcy from the news media, normal surveillance reports, reports from the public, other government agencies, or other means. Regardless of the source of

information, affected FAA offices should initiate immediate action. Since these problems may raise questions about an operator's ability to safely conduct operations, CHDO and Regional Flight Standards Division (RFSD) managers and principal inspectors (PI) must be alert to indicators of financial problems.

A. Indicators. One or more of the following indicators may show that an operator is experiencing financial problems:

- Changes in operational control systems
- Changes in programs or subsystems that are part of the operational control system
- Continuing Analysis and Surveillance System reveals a rising trend of deficiencies in the performance and effectiveness of inspection, maintenance, preventive maintenance, or alterations programs
- Revisions to operations procedures manuals
- Revisions to maintenance and inspection program procedures manuals
- Requests for changes in training programs
- Changes in aircraft, equipment, and parts inventories
- Increasing number of personnel layoffs
- Reduction in route structure
- Reduction of line stations and maintenance bases
- Changes in substantial maintenance contracts
- Reductions in flight schedules
- Increase in repeat maintenance logbook discrepancies
- Increase in short-term escalations
- Increase in the number of Minimum Equipment Lists (MEL)
- Increase in the number of extensions to FAA MEL requests
- Increases in turnover rate among employees/management

- Delays in meeting payrolls
- Increase in the frequency of complaints against the operator
- High-risk credit rating in the Safety Performance Analysis System (SPAS)
- Media reports of an airline's financial difficulty

B. Bankruptcy. Financial difficulties may occasionally lead an operator to file for bankruptcy protection. In these cases, early FAA notification is often not practical. Therefore, it is essential that air carriers intending to operate during bankruptcy proceedings develop, in partnership with the FAA, an operating plan. Since judgments and decisions of the bankruptcy court must be taken into account, it may be impractical for the operator to project a completion date for all operational changes. The operator must continue to operate at all times in accordance with Title 14 of the Code of Federal Regulations (14 CFR).

NOTE: The regulations do not specifically require air carriers to notify the FAA of impending bankruptcies. However, 14 CFR part 119, § 119.51 requires an air carrier to submit any application for an amendment to operations specifications (OpSpecs) at least 90 days before the proposed date of the amendment is to become effective unless a shorter time is approved.

C. Surveillance.

(1) When an operator experiences a labor dispute, strike, or bankruptcy, the FAA may need to modify the existing surveillance plan to assess the air carrier's ability to conduct safe operations. The surveillance program must be modified to meet any unique circumstances and operational changes proposed by the operator.

(2) Analysis of surveillance data may be provided by the assigned Operations Research Analyst

(ORA), or, upon request, the Flight Standards Safety Analysis Information Center to support specific work activities.

D. Communications.

(1) *Operator Communications.* The CHDO should initiate and maintain an open line of communication with the operator. The CHDO and operator should continually discuss the operator's operational status and projected changes, including FAA surveillance adjustments. Such collaborative communication is intended to maintain a proactive oversight of the operation.

(2) *Internal FAA Communications.* Labor disputes, strikes, and bankruptcy actions generate many inquiries, complaints, and opinions from other government agencies, labor unions, the general public, and other sources. Therefore, the CHDO must inform the regional office, which will keep AFS-200, AFS-300, and AFS-900 informed at all times.

NOTE: In the course of conducting surveillance, an inspector inevitably acquires proprietary knowledge about the operator and forms personal opinions. Inspectors and managers should not express personal opinions or discuss any findings with the media or general public. FAA employees should refer all public inquiries regarding the status of FAA activities to the appropriate public affairs office.

E. Resumption of Operations after Labor Dispute, Strike, or Bankruptcy. After the labor dispute, strike, or bankruptcy has been resolved, normal operations might not be resumed immediately. Upon resumption of normal operations, the FAA may need to revise its level and focus of surveillance. It is important to maintain internal FAA coordination for agreement on the appropriate levels of surveillance.

SECTION 2. PROCEDURES

1. PREREQUISITES AND COORDINATION REQUIREMENTS.

A. Prerequisites (Inspector Qualifications):

- Knowledge of the regulatory requirements of 14 CFR parts 119 and 121
- Successful completion of the General Aviation/Air Carrier Aviation Safety Inspector's Indoctrination course, or previous equivalent
- Experience with the involved operation
- Knowledge of the equipment involved

B. *Coordination.* This task requires coordination with the CHDO, regional offices, AFS-200, AFS-300, and AFS-900.

3. REFERENCES, FORMS, AND JOB AIDS.

A. References:

- 14 CFR parts 119 and 121
- FAA Order 8400.10, appendix 6, Air Transportation Oversight System

B. *Forms.* None.

C. Job Aids:

- Figure 125-1, Monthly Surveillance Report Checklist
- Figure 125-2, ACAT/SEAT Risk Indicators

5. CHDO RESPONSIBILITIES AND PROCEDURES.

A. Regional Coordination.

(1) *Before a Labor Dispute, Strike, or Bankruptcy.* When a determination is made that a labor dispute, strike, or bankruptcy is expected, the CHDO must:

- (a) Immediately inform the regional office.
- (b) Report the extent of any possible work stoppage or interruption in operations.
- (c) Report any tentative modifications to the surveillance plan during the labor dispute, strike, or bankruptcy.
- (d) Report any operational safety concern.

(2) *During a Labor Dispute, Strike, or Bankruptcy.* When the labor dispute, strike, or bankruptcy occurs, the CHDO must:

- (a) Immediately inform the regional office.
- (b) Coordinate with the operator regarding its business plan (see paragraph 5B below).
- (c) Modify and coordinate the surveillance plan with the regional office (see paragraph 5C below).
- (d) Assess any resource needs and communicate these needs to the regional office.
- (e) Continually advise the regional office of any newsworthy events or significant developments.
- (f) Assess what safety elements may be compromised.

NOTE: Once the labor dispute, strike, or bankruptcy occurs, both the operator and the CHDO should work proactively and in partnership to implement and execute the business and surveillance plans. The operator and CHDO should discuss any significant safety-related findings either generated through the air carrier's own internal tracking and oversight programs or the FAA surveillance activities.

B. *Operator's Business Plan.* When an operator faces financial difficulties (e.g., pending bankruptcy), the operator should develop and submit a business plan that outlines operational impacts and management initiatives.

(1) *Meet with the Operator.* The CHDO must schedule a meeting to brief the operator's key management personnel of the need for a business plan.

(a) At the initial meeting, the CHDO will inform the operator that it should develop and submit a business plan that should include the following elements:

- Address any changes the operator will make during the transition period that will require FAA approval or acceptance
- Address operational impacts and reduced capabilities (e.g., staff reduction, contracting out, vendor

oversight, fleet reduction, route changes)

- Address the decisions of the bankruptcy court
- Address initiatives for continued compliance with regulatory requirements and safe operating practices during the transition
- Indicate interim operating methods and procedures with provisions for additions or modifications to the plan when necessary
- Include the operator's estimated schedule of when changes will be implemented

(b) The CHDO should advise the operator that the FAA will respond to modifications to the business plan in a timely manner if the operator provides timely notification of these changes.

(2) *Review the Business Plan.* The CHDO should review the operator's business plan to ensure that it covers the requirements listed in paragraph 5(1)(a) above. If the PIs find deficiencies or potential problem areas in the business plan, they should meet with the operator to work through the subject areas.

(3) *Develop a Surveillance Plan, if Necessary.* The operator may decline to develop a business plan or share the contents of such a plan with the CHDO. In such cases, the CHDO should develop a surveillance plan with increased emphasis placed in areas of suspected moderate and high risk. In this case, the regional office should interact with the operator regarding its business plans.

C. Surveillance Program.

(1) *Non-ATOS Air Carriers.*

(a) The CHDO will continually review its surveillance program and adjust it to meet the operator's changing needs. The CHDO should use the Surveillance and Evaluation Program (SEP) and the Surveillance and Evaluation Assessment Tool (SEAT). Instructions for use can be found in the SEP Work Instruction Guide under the Surveillance and Evaluation link at <http://cset.faa.gov>. Special attention should be given to the SEAT risk indicators listed in Figure 125-2.

(b) All FAA surveillance should be recorded using the appropriate PTRS activity codes. Geographic units may be assigned to perform additional surveillance activities, as required. The regional office will ensure that geographic manpower resources are available to accomplish the activities.

(2) *ATOS Air Carriers.* The Certificate Management Team (CMT) will review their Comprehensive Surveillance Plan (CSP), based upon identified risks, IAW guidance in FAA Order 8400.10, appendix 6. During this review, the risk indicators in Figure 125-2 should receive special attention, as well as other issues discovered through surveillance or meetings with air carrier management personnel. The CSP allows the CMT to promptly redirect surveillance. All ATOS data collection should be recorded IAW the guidance in FAA Order 8400.10, appendix 6.

(3) *Analysis and Coordination of Surveillance Data.*

(a) Information obtained from surveillance reports and other related sources must be evaluated, with special emphasis on the following areas:

- Noncompliance with regulations or safe operating practices
- Negative trends
- Isolated deficiencies or incidents
- Causes of noncompliance trends or isolated deficiencies

(b) The results of any analysis of surveillance data should be provided to the PI. The PI will communicate the necessary information to the operator.

(4) *Debrief Operator.* The PI will:

- Discuss negative trends or findings discovered by the surveillance program
- Discuss possible corrective action(s)
- Inform the operator that he or she will send an official written notification of findings
- Inform the operator to submit a corrective action plan

NOTE: The PI and the operator should agree on time limits for the corrective action plan during the debriefing. Negotiations over time limits can be done later if mitigating circumstances arise.

(5) *Follow-Up Surveillance.* Upon the completion of corrective action, the CHDO will schedule periodic follow-up surveillance (completed within 6 months) in the areas of the deficiency to determine the effectiveness of the operator's corrective action.

(6) *Surveillance Report.* The CHDO must submit a surveillance report at the end of each week to the regional office's point of contact while the air carrier is undergoing a labor dispute, strike, or bankruptcy. The report should address the items in Figure 125-1, Monthly Surveillance Report Checklist.

D. Resumption of Normal Operations After a Labor Dispute, Strike, or Bankruptcy. In some cases, after an operator emerges from a labor dispute, strike, or bankruptcy, the reduction in operations is followed by rapid expansion. The CHDO/RFSD managers should develop a follow-up surveillance plan using bulletin HBAT 98-36, Monitoring Operators During Periods of Growth or Major Change, when monitoring air carriers during periods of growth or major change. The surveillance plan will confirm whether the operator is able to continue operating in compliance with the regulations.

7. REGIONAL RESPONSIBILITIES AND PROCEDURES.

A. Before a Labor Dispute, Strike, or Bankruptcy. When the CHDO informs the regional office that a labor dispute, strike, or bankruptcy is expected, the regional office must:

(1) Immediately inform AFS-200, AFS-300, and AFS-900;

(2) Review any tentative modifications to the surveillance plan from the CHDO and work with the CHDO to improve the plan, if necessary;

(3) Determine if the CHDO will need additional resources for the surveillance plan; and

(4) Review any safety concerns.

B. During a Labor Dispute, Strike, or Bankruptcy. When the CHDO informs the regional office that a labor dispute, strike, or bankruptcy is actually occurring, the regional office must:

(1) Immediately inform AFS-200, AFS-300, and AFS-900;

(2) Assign a regional point of contact between the region, CHDO, AFS-200, AFS-300, and AFS-900;

(3) Review the CHDO's modified surveillance plan;

(4) Allocate any additional resources to the CHDO, as needed;

(5) Coordinate with other regional offices;

(6) Request, review, and use any data, analysis, and information provided by the Flight Standards Safety Analysis Information Center;

(7) Provide any of the data, analysis, or information that may be useful to the CHDO, as needed; and

(8) Review any safety concerns.

9. FUTURE ACTIVITIES. The CHDO must:

- Schedule and accomplish follow-up surveillance(s) (completed within 6 months) specific to the areas in which the operator took corrective actions on deficiencies found during the labor dispute, strike, or bankruptcy
- Schedule and accomplish follow-up post-labor dispute, strike, or bankruptcy surveillance activities
- Keep all supporting documentation
- Review and close out all PTRS and ATOS documentation

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FIGURE 125-1. MONTHLY SURVEILLANCE REPORT CHECKLIST

The CHDO's monthly surveillance report should address the following:

1. External stress issues that the air carrier is experiencing, such as:
 - a. A labor dispute ((precontract)/slow downs/work disruptions/unfounded AC logbook discrepancies/refusal to work overtime).
 - b. Management issues (lock outs/refusal to negotiate).
 - c. A strike.
 - d. A bankruptcy.
 - e. Changes in management.
 - f. Significant changes in personnel.
 - g. Significant changes in equipment (office type/ground support/aircraft, etc.).
2. A review of the logbook, including the number of minimum equipment list (MEL) items:
 - a. Opened.
 - b. Closed.
 - c. Granted FAA extensions.
3. The maintenance program, including:
 - a. Whether the air carrier has requested changes to the continuous airworthiness maintenance program.
 - b. The number of short-term escalations used.
4. Operations training during this period, including:
 - a. Whether the air carrier has requested to reduce the pilot training program.
 - b. Whether the air carrier has requested to change the pilot training contract provider.
 - c. Operations traffic statistics. (This information must be obtained from the air carrier.)
 - d. Total fleet block hours.
 - e. Total available seat miles.

FIGURE 125-1. (Continued)

- f. Total number of flight hours flown.
 - g. Total revenue passenger miles.
5. A review of significant surveillance findings.
 6. The air carrier's SPAS performance measures (negative trends), if appropriate.
 7. Any changes to the operator's business plan.
 8. Corrective actions (discrepancies that the air carrier corrected during this reporting period).
 9. Reduction in route structure.
 10. Changes in management personnel.
 11. Changes in technical support personnel (pilots/mechanics/dispatch).
 12. Recent pending enforcement cases.
 13. Aircraft placed in, or removed from, storage.
 14. Other areas reflecting changes determined by the CHDO/regional office.
 15. Any safety concerns.

FIGURE 125-2. ACAT/SEAT RISK INDICATORS

1. SPAS Economic Indicators. Periodically, inspectors should:
 - a. Review the SPAS Experian Credit Rating Database for economic and/or financial changes, such as changes in the certificate holder's external credit rating.
 - b. Contact the Department of Transportation, Air Carrier Fitness Division to determine if the air carrier has had a change in the marketplace, loss of passenger volume, and/or related revenues.

2. Changes in Management. During surveillance activities, inspectors should:
 - a. Review the OpSpecs regularly to determine changes or vacancies in the 14 CFR part 119 key management personnel.
 - b. Inquire about changes in air carrier middle management personnel responsible for managing critical departments of the organization.
 - c. Inquire about reorganizations that can reduce the amount of safety oversight within the air carrier.
 - d. Determine if there is a good working relationship between the air carrier and FAA personnel.
 - e. Determine whether the air carrier is willing to share data and findings with the FAA.

3. Turnover in Personnel. During surveillance activities, inspectors should:
 - a. Inquire about changes in personnel/departments (streamlining) that may reduce the amount of safety oversight within the air carrier.
 - b. Inquire about turnover in personnel to determine the potential impact on the air carrier's system and operational stability.
 - c. Find out whether new or remaining staff are being retrained or cross-trained to perform new or expanded maintenance and/or operations functions.

4. Reduction in Force. During surveillance activities, inspectors should:
 - a. Find out if downsizing has reduced the amount of internal safety oversight within the air carrier.
 - b. Find out if a reduction in force, layoff, or buyouts has been assessed by the air carrier to determine the impact that these events could have on the air carrier's system and operational stability.
 - c. Inquire about the speed or rate of any reduction, layoff, or buyout.
 - d. Inquire about the issue of training as it relates to workforce reductions or layoffs. Whether the remaining staff is being retrained or cross-trained to perform the new functions is a factor.

5. Merger or Takeover. During surveillance or certification activities, inspectors should:
 - a. Inquire about whether the buyer has an aviation background.
 - b. Inquire about whether key personnel will be retained or replaced.

FIGURE 125-2. (Continued)**6. Labor Management Relations.** During surveillance activities, inspectors should:

- a. Inquire about threatened or actual shutdown in operations, which may have a disastrous economic impact on an air carrier.
- b. Inquire about the status of the bargaining agreement between air carrier labor and management.
- c. Look for signs that indicate a lack of trust between parties.
- d. Look for dissatisfaction among groups within the owner/operator base, which indicates instability. For example, long hours and low pay, even as an owner/operator, can present problems and have an impact on an air carrier's system and operational stability.

7. Changes to Program/Outsourcing. During certification or surveillance activities, inspectors should:

- a. Consider the impact of new or major program changes on personnel. For example:
 - Does the air carrier's staff size and capabilities meet the requirements of these program changes?
 - Are air carrier personnel trained in and have a clear understanding of the new program or program changes?
- b. Consider the reason behind any program improvements or enhancements when reviewing a program change or revision.
- c. Inquire about the air carrier outsourcing any functions in maintenance, training, and/or operations.
- d. Consider how the air carrier's outsourcing policies affect its internal surveillance requirements.
- e. Consider the qualifications of contractors used by the air carrier for outsourcing. For example, inspectors should determine if contractors were approved by FAA prior to being authorized for use by the air carrier.
- f. During surveillance activities, inspectors should inquire about the air carrier outsourcing routine and substantial maintenance or emergency equipment maintenance. For example, inspectors should check the OpSpecs (D091) to determine if it includes everything between emergency equipment and substantial heavy maintenance.
- g. During surveillance activities inspectors, should inquire about the ground-handling contract including support personnel. For example:
 - Has the air carrier bought or leased ground space from another carrier?
 - Does the ground-handling contract include all station personnel such as ramp, fueling, deicing, etc.?

8. Relocation/Closing of Facilities. During surveillance activities, inspectors should:

- a. Consider the impacts of adding, closing, or relocating a facility. For example, new facilities may require more surveillance than older, established facilities.
- b. Consider the background and experience of the personnel assigned to the new facility added by an air carrier.

FIGURE 125-2. (Continued)

- c. Consider the impact that a change in facility has on the personnel requirements and determine whether the air carrier has adequate resources and training.
 - d. Consider the rate and pace at which the carrier adds, relocates, and/or closes facilities. For example, a change that is major, abrupt, haphazard, and/or occurs over a short timeframe may be a sign of trouble.
9. Lease Arrangement. During certification and/or surveillance activities, inspectors should:
- a. Determine the type of leasing arrangement the air carrier maintains. For example, the air carrier may have a wet lease, dry lease, or interchange agreement in place with other entities.
 - b. Review the aircraft leases and/or interchange agreements to determine if all of the responsibilities of the lessor/lessee are described. The inspector must ensure that the lease/interchange contains all effective dates and provisions required by regulation. Those items not required by regulation must be reviewed to determine their applicability and compatibility with the regulatory requirements.