

Title 14—Aeronautics and Space
CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 12035; Amdt. Nos. 61-61, 63-16, 65-21, 91-117, 133-4, 137-4, 141-12]

GENERAL OPERATING AND CERTIFICATION REGULATIONS

Carriage of Narcotic Drugs, Marihuana, and Depressant or Stimulant Drugs or Substances

The purpose of these amendments to Part 91 of the Federal Aviation regulations is to make the current prohibition in § 91.12(a) against the carriage in civil aircraft of narcotic drugs, marihuana, and depressant or stimulant drugs or substances between Mexico and the United States apply to the operation of civil aircraft anywhere within the United States. These amendments also make a violation of § 91.12(a), as well as a conviction for violating any Federal or State statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, and depressant or stimulant drugs or substances, a basis for denying applications for airman certificates issued under Parts 61, 63, and 65 and a basis for suspending or revoking those certificates. In addition, a violation of § 91.12(a) is made the basis for suspending or revoking the operating certificate authority issued under Part 133 (rotorcraft external-load operations), Part 137 (agricultural aircraft operations), and Part 141 (pilot schools). Finally, this amendment to Part 91 (§ 91.84) requires an appropriate flight plan to be filed for the flight of civil aircraft between Mexico or Canada and the United States, unless otherwise authorized by ATC.

These amendments are based on a notice of proposed rule making (Notice 72-16) published in the FEDERAL REGISTER on July 4, 1972 (37 FR 13189).

A number of comments received in response to Notice 72-16 expressed opposition to regulation by the FAA in the area of narcotics control and appeared to question their justification. As explained in the preamble to the notice, the current provisions of § 91.12(a) were adopted in 1969 (34 FR 13922) in recognition of the increasing hazard to safety in air commerce resulting from the increased use of civil aircraft for the illicit carriage of narcotics and other drugs into the United States. These

hazards result from attempts to avoid detection or pursuit through violent maneuvers, low flying, flight in bad weather, and use of unsafe landing areas. Since 1969, information available to the FAA indicates that the illicit carriage of drugs by aircraft is occurring in various places within the United States, in violation of State as well as Federal statutes. Accordingly, in the interest of safety, this amendment extends the applicability of the current prohibition in § 91.12(a) to include the operation of civil aircraft anywhere within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.

The current provisions of §§ 61.6 (§ 61.15 as of November 1, 1973) and 63.12, which were adopted in 1969 (34 FR 13922), make a violation of any Federal statute governing illegal activities involving narcotic drugs, marihuana, and depressant or stimulant drugs or substances, or a violation of § 91.12(a), a basis for denying applications for airman certificates issued under Parts 61 and 63, and for suspending and revoking those certificates. This amendment expands those current provisions of §§ 61.6 and 63.12 to also encompass violations of State statutes governing such illegal activities. In addition, the amendment adds identical provisions to § 65.12 of Part 65, which governs the issuance of airman certificates to air traffic control-tower operators, aircraft dispatchers, mechanics, repairmen, and parachute riggers. As explained in the Notice, the FAA is adopting these amendments to Parts 61, 63, and 65 because it believes a demonstrated willingness to violate Federal or State statutory provisions governing the illegal activities specified, or a demonstrated willingness to violate § 91.12(a), clearly demonstrates a tendency to act without inhibition in an unstable manner without regard to the rights of others, and clearly demonstrates that the applicant for a certificate would not be compliance minded regarding the many requirements necessary for safety in air commerce or air transportation.

The FAA also adopted in 1969 (34 FR 13922) amendments to Parts 121, 123, 127, and 135 which currently provide for the suspension or revocation of an operating certificate issued under those parts if the certificate holder permits any aircraft owned or operated by him to be engaged in any operation he knows to be in violation of § 91.12(a). This amendment adds the same provisions for

certificate suspension or revocation to Parts 133, 137, and 141. As stated in the notice, the rationale for these provisions is the FAA belief that the privileges inherent in those operating certificates can directly support, or even be essential to, the use of aircraft in smuggling narcotic drugs, marihuana, and depressant or stimulant drugs or substances. This is considered to be true regardless of whether the aircraft is being operated under the certificate at the time, since the corporate financial and management strength necessary to operate such aircraft largely flows from the operating certificates. As in the case of airman certificates, operating certificates can have the effect of providing a condition necessary to the use of the aircraft, by any person, in the hazardous business of smuggling. Furthermore, for the same reasons that support actions against airman certificates, the risk-taking willingness of the corporate or individual management of the holders of those operating certificates would clearly negate their ability to adhere to the conditions necessary for safety in air commerce or air transportation. The FAA considers this to be true, regardless of whether that risk-taking occurs by the certificate holder leasing the aircraft to other persons who smuggle the illegal items or by their operating the aircraft themselves in that business.

In addition to the foregoing, the justification for these amendments encompasses the equally important public interest factors that are directly opposed to the continued use of airman and operating certificates to support the aerial smuggling of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

As proposed, this amendment prescribes a new § 91.84 which requires persons operating civil aircraft on a flight between Mexico or Canada and the United States to file a VFR or IFR flight plan, as appropriate, unless otherwise authorized by ATC. In adopting this amendment the FAA considered the fact that Part 99 already requires a flight plan to be filed for flights between other countries and the United States and is of the opinion that the flight plan requirement will further assist the agency in conducting an effective safety enforcement program.

(Secs. 307(c), 313(a), 601, 602, 604, 607, Federal Aviation Act of 1958, 49 U.S.C. 1348(c), 1354(a), 1421, 1422, 1424, 1427; sec. 6(c), Department of Transportation Act 49 U.S.C.

(As published in the Federal Register 38 F.R. 17491 on July 2, 1973)

1655(c)

In consideration of the foregoing:
A. Part 61, of the Federal Aviation Regulations is amended, effective August 1, 1973, as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. Part 61 as amended by amending the title and paragraph (a) of § 61.6 to read as follows:

§ 61.6 Offenses involving narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

(a) No person who is convicted of violating any Federal or State statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, and depressant or stimulant drugs or substances, is eligible for any certificate or rating issued under this part for a period of 1 year after the date of final conviction.

B. Part 61 of the Federal Aviation regulations is amended, effective November 1, 1973, by amending the title and paragraph (a) of § 61.15, as adopted in Amendment No. 61-60 (38 FR 3156; published February 1, 1973), to read as follows:

§ 61.15 Offenses involving narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

(a) No person who is convicted of violating any Federal or State statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, and depressant or stimulant drugs or substances, is eligible for any certificate or rating issued under this part for a period of 1 year after the date of final conviction.

C. Parts 63, 65, 91, 133, 137, 141 of the Federal Aviation regulations are amended, effective August 1, 1973, as follows:

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

1. Part 63 is amended by amending the title and paragraph (a) of § 63.12 to read as follows:

§ 63.12 Offenses involving narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

(a) No person who is convicted of violating any Federal or State statute

relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, and depressant or stimulant drugs or substances, is eligible for any certificate or rating issued under this part for a period of 1 year after the date of final conviction.

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PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

2. Part 65 is amended by adding new § 65.12 to read as follows:

§ 65.12 Offenses involving narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

(a) No person who is convicted of violating any Federal or State statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, and depressant or stimulant drugs or substances, is eligible for any certificate or rating issued under this part for a period of 1 year after the date of final conviction.

(b) No person who commits an act prohibited by § 91.12(a) of this chapter is eligible for any certificate or rating issued under this part for a period of 1 year after the date of that act.

(c) Any conviction specified in paragraph (a) of this section, or the commission of the act referenced in paragraph (b) of this section, is grounds for suspending or revoking any certificate or rating issued under this part.

PART 91—GENERAL OPERATING AND FLIGHT RULES

3. Part 91 is amended by revising § 91.12 and by adding new § 91.84 to read as follows:

§ 91.12 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.

(b) Paragraph (a) of this section does not apply to any carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances authorized by or under any Federal or State statute

or by any Federal or State agency.

§ 91.84 Flights between Mexico or Canada and the United States.

Unless otherwise authorized by ATC, no person may operate a civil aircraft between Mexico or Canada and the United States without filing an IFR or VFR flight plan, as appropriate.

PART 133—ROTORCRAFT EXTERNAL-LOAD OPERATIONS

4. Part 133 is amended by adding a new § 133.14 to read as follows:

§ 133.14 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

If the holder of a certificate issued under this part permits any aircraft owned or leased by that holder to be engaged in any operation that the certificate holder knows to be in violation of § 91.12(a) of this chapter, that operation is a basis for suspending or revoking the certificate.

PART 137—AGRICULTURAL AIRCRAFT OPERATIONS

5. Part 137 is amended by adding a new § 137.23 to read as follows:

§ 137.23 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

If the holder of a certificate issued under this part permits any aircraft owned or leased by that holder to be engaged in any operation that the certificate holder knows to be in violation of § 91.12(a) of this chapter, that operation is a basis for suspending or revoking the certificate.

PART 141—PILOT SCHOOLS

6. Part 141 is amended by adding a new § 141.6 to read as follows:

§ 141.6 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

If the holder of a certificate issued under this part permits any aircraft owned or leased by that holder to be engaged in any operation that the certificate holder knows to be in violation of § 91.12(a) of this chapter, that operation is a basis for suspending or revoking the certificate.

Issued in Washington, D.C., on June 19, 1973.

ALEXANDER P. BUTTERFIELD,
Administrator.