

Advanced Distribution
Pending Issuance of
FAR Amendments 1-8;
43-1; 65-4; 91-15;
and 121-3

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Docket No. 8161; Amdts. 1-8; 43-1; 65-4; 91-15; 121-3]

PART 1—DEFINITIONS AND ABBREVIATIONS

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

PART 91—GENERAL OPERATING AND FLIGHT RULES

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

Miscellaneous Amendments

The purpose of this amendment is to add certain clarifying amendments to the recently recodified Federal Aviation Regulations. After the promulgation of Parts 1, 43, 65, 91, and 121 certain questions arose as to the meaning of the recodified language of the sections concerned. These amendments are issued to make it clear that no substantive changes were intended in the pertinent sections. So far as the Agency is aware, this amendment clears up all existing problems of this nature. However, if further clarifications of this type are necessary to preserve the substance of the former rules, the Agency will issue additional spot amendments as necessary.

The definition of the term "commercial operator" added to Part 1 in conjunction with the issuance of Part 121 is amended to make it clear that any "carriage by aircraft in air commerce of persons or property, other than as an air carrier or foreign air carrier or under the authority of Part 375" (of Title 14 of the U.S. Code) when performed "for compensation or hire" is a "commercial operation". The definition as issued, by combining the definition of "commercial operator" formerly contained in CAR 42 together with the note to § 42.1(a)(4) could be interpreted to exclude an operation for which a fee is charged if it is incidental to a persons other business and not "a major enterprise for profit". The amended definition avoids the possibility of such an interpretation.

As published in the Federal Register on March 19, 1965 (30 F.R. 3637)

Section 121.1(a)(5) is amended to clarify the applicability of Part 121 to a commercial operator. The language added is to make it clear that Part 121 does not apply to operations by a commercial operator such as ferry and training flights, that are conducted under Part 91. Paragraph (d) of § 121.1 is deleted since it is surplusage in view of the amended definition of "commercial operator" accomplished in this amendment.

Section 43.9 is amended to delete "preventive maintenance" from the record-keeping requirements thereof since CAR §§ 18.20 and 18.21, upon which § 43.9 is based, did not include "preventive maintenance".

Sections 65.95(a)(1) and 91.161(b) are amended to make certain cross references consistent with the recodified regulations.

Section 91.27(a) is amended to avoid any implication that a civil aircraft may be operated without a valid airworthiness certificate. The possibility of such a misinterpretation existed under CAR § 43.10(a) as well as under § 91.27(a) as presently written.

A new § 91.49 is being added to Part 91 to make it clear that the requirement for an aural speed warning device contained in § 25.1303 and covered by SR 450A is a continuing operating requirement for all operations in air commerce with a transport category airplane. The preamble to the miscellaneous amendments issued in conjunction with the issue of Part 121 (29 F.R. 19096) stated that it was not necessary to recodify SR 450A. This conclusion was based on the belief that since the SR required that all transport category airplanes be equipped with the aural speed warning device by a date before April 1, 1965, there would be no need for a continuing operating rule. However, the Agency now believes that a continuing requirement is necessary since it is possible that a transport category airplane, type certificated before the aural speed warning device was required, could at some future date be used in air commerce though it is not now being so used (for example, an airplane now being used in a foreign country that is sold to a person who is subject to the FAR's).

Section 91.87(g) is amended to make it clear that a pilot's determination to use a runway for landing other than the preferential runway assigned by ATC must be based on a determination by the pilot that the use of another runway is "in the interest of safety". As amended the section is consistent with former CAR § 60.18(b) upon which § 91.87(g) is based.

Section 91.103 is amended to make it clear that any person operating a civil aircraft of Cuban registry within the United States must, in addition to operating in controlled airspace, also obtain an "air traffic clearance" regardless of whether the flight is IFR or VFR and must comply with ATC instruction. As so amended, this section is consistent with SR 456, upon which it is based.

Section 91.117 is amended by adding an "or" between subparagraphs (1) and (2) of paragraph (h) to make it clear that a person need not meet the requirements of both subparagraphs in order to operate more than 50 feet below the minimum altitude. In this connection, it should be noted that when a pilot is operating under the conditions of either subparagraph he must execute a missed approach procedure whenever he cannot maintain visual reference to the ground or ground lights.

Paragraphs (e) and (f) of § 121.3 are amended so that the wording of these paragraphs, applicable to supplemental air carriers and commercial operators, is consistent with the wording of other paragraphs in § 121.3 that apply to domestic and flag air carriers.

Sections 121.93(a)(1) and 121.653(d) are amended to correct typographical errors.

A new paragraph (d) is added to § 121.289 to contain the substance of paragraph § 121.289(d) as set forth in the notice of proposed rule making for Part 121. While this paragraph is to a certain extent obsolete the Agency has decided that it should be added to make it clear that any extensions granted before February 1, 1965, continue in effect after the effective date of Part 121 and therefore, there would be no violation of the section until the extension expires.

The amendment to § 121.321 is made to ensure that only "type certification" and no other kind of certification is intended to be referred to therein, thus avoiding a possibility of confusion that exists under the present CAR sections and the section as recodified.

Section 121.365(b) is amended to make it clear that the inspections referred to throughout the subpart as "required inspections" are those set forth in the manual pursuant to § 121.369(b)(2) or (3).

The references to "supplemental" air carrier and "commercial operator" contained in the parentheses in § 121.425(d) are deleted to correct an inadvertent error since the section by its own terms applies only to domestic and flag air carriers.

The definitions of "month" and "year" contained in CAR Parts 40, 41, and 42

Recodification

stated that as used in those parts they meant "calendar month" or "calendar year", respectively. The Agency decided not to include definitions of "month" or "year" in the recodified regulations and therefore the word "calendar" is being inserted before the words "month" and "year", where used throughout the "Training Program", "Flight Crewmember Qualifications", and "Flight Time Limitations" subparts of Part 121.

Section 121.597(b) is amended to make it clear that a flight release may be prepared by either the pilot in command or the person authorized to exercise operational control over the flight. As amended the section is consistent with former CAR § 42.381(a) upon which § 121.597(b) is based.

Since this amendment is clarifying in nature, I find that notice and public procedure hereon are unnecessary, and it may be made effective on less than 30 days notice.

In consideration of the foregoing Chapter I of Title 14 of the Code of Federal Regulations is amended as follows, effective April 1, 1965.

(Secs. 306, 307, 313(a), 601 through 610, and 1202 of the Federal Aviation Act of 1958 (49 U.S.C. 1347, 1348, 1354(a), 1421 through 1430, and 1522))

Issued in Washington, D.C., on March 16, 1965.

N. E. HALABY,
Administrator.

§ 1.1 [Amended]

1. The definition of "commercial operator" in § 1.1 is amended to read as follows:

"Commercial operator" means a person who, for compensation or hire, engages in the carriage by aircraft in air commerce of persons or property, other than as an air carrier or foreign air carrier or under the authority of Part 375 of this Title. Where it is doubtful that an operation is for "compensation or hire", the test applied is whether the carriage by air is merely incidental to the person's other business or is, in itself, a major enterprise for profit.

§ 43.9 [Amended]

2. By amending § 43.9 as follows:

a. By striking the command the words "preventive maintenance" after the word "maintenance" in the heading of § 43.9 and in the first sentence of paragraph (b).

b. By striking the words "alters or performs preventive maintenance on" in paragraph (a) and by inserting the words "or alters" in place thereof.

c. By striking the words "or to certificated pilots performing preventive maintenance under § 43.3(h)" after the words "Part 91" and before the period in paragraph (c).

§ 65.95 [Amended]

3. The parenthetical language in § 65.95(a)(1) is amended to read as follows: "(except any aircraft maintained in accordance with a continuous airworthiness program under Part 121 or 127 of this chapter)."

4. Part 91 is amended as follows:

a. By amending § 91.27(a) to read as follows:

§ 91.27 Civil aircraft certificates required.

(a) No person may operate a civil aircraft unless it has within it—

(1) An appropriate and current airworthiness certificate (including a special flight permit or an authorization under § 91.45); and

(2) A registration certificate issued to its owner.

b. By adding a new § 91.49 reading as follows:

§ 91.49 Aural speed warning device.

No person may operate a transport category airplane in air commerce unless that airplane is equipped with an aural speed warning device that complies with § 25.1303 (a)(11) and (b).

§ 91.87 [Amended]

c. By amending the second sentence of § 91.87(g) by inserting the words "in the interest of safety" after the word "determines".

d. By amending § 91.103 to read as follows:

§ 91.103 Operation of civil aircraft of Cuban registry.

No person may operate a civil aircraft of Cuban registry except in controlled airspace and in accordance with air traffic clearances or air traffic control instructions that may require use of specific airways or routes and landings at specific airports.

§ 91.117 [Amended]

e. By inserting the word "or" after the semicolon at the end of § 91.117(h)(1).

f. By amending § 91.161(b) to read as follows:

§ 91.161 Applicability.

(b) Sections 91.165, 91.169, 91.171, and 91.173 of this subpart do not apply to an aircraft maintained in accordance with a continuous airworthiness program under Part 121 or 127 of this chapter.

5. Part 121 is amended as follows:

§ 121.1 [Amended]

a. By inserting the words "when it engages in the carriage of persons or property in air commerce for compensation or hire with large aircraft" before the period at the end of § 121.1(a)(5).

b. By striking paragraph (d) of § 121.1.

§ 121.3 [Amended]

c. By inserting the word "operating" after the word "carrier" in § 121.3(e) and after the word "operator" in § 121.3(f).

§ 121.93 [Amended]

d. By striking the word "satisfactory" in § 121.93(a)(1) and inserting the word "satisfactorily" in place thereof.

e. By adding the following new paragraph at the end of § 121.289:

§ 121.289 Landing gear; aural warning device.

(d) A certificate holder who, before February 1, 1965, applied for and received an extension beyond the date set forth in paragraph (a) of this section may, until that extension date, operate large landplanes without complying with this section.

§ 121.321 [Amended]

f. By adding the word "type" after the word "was" in § 121.321.

§ 121.365 [Amended]

g. By adding the words "in accordance with § 121.369(b)(2) or (3)" after the word "manual" in § 121.365(b).

§ 121.425 [Amended]

h. By striking the words "or supplemental air carrier or commercial operator" in the parentheses in § 121.425(d) and inserting the words "air carrier" in place thereof.

i. By inserting the word "calendar" before the word "month" wherever the word "month" is used throughout Subparts N, O, P, Q, R, and S and by inserting the word "calendar" before the word "year" in § 121.471(a)(1).

§ 121.597 [Amended]

j. By inserting the words "or the person authorized by the operator to exercise operational control over the flight" after the word "command" in § 121.597(b).

§ 121.653 [Amended]

k. By striking the word "or" after the word "part" in the first sentence of § 121.653(d).