

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 15176; Amendment Nos. 91-138 and 133-6]

PART 91—GENERAL OPERATING AND FLIGHT RULES

PART 133—ROTORCRAFT EXTERNAL-LOAD OPERATIONS

Operations Review Program Amendment No. 2: Rotorcraft External-Load Operations

AGENCY: Federal Aviation Administration, FAA (DOT).

ACTION: Final rule.

SUMMARY: These amendments require all rotorcraft external-load operations to be conducted under Part 133 whether or not they are conducted for compensation or hire, thus allowing restricted category rotorcraft to be operated for compensation or hire under Part 133.

This amendment resulted from proposals from the Aerial Crane Operators Committee (ACO) recommending that restricted category rotorcraft external-load operations be conducted under the provisions of Part 133 and that Part 91 be amended to allow those operations to be conducted for compensation or hire.

EFFECTIVE DATE: August 10, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. D. A. Schroeder, (AFS-901), Safety Regulations Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 755-8715.

SUPPLEMENTARY INFORMATION: Interested persons have been given an opportunity to participate in the making of these amendments by a notice of proposed rule making (Notice 75-38; 40 FR 54188; November 20, 1975). In addition, pursuant to a notice of hearing (Notice 75-38A; 41 FR 7517; February 19, 1976) the FAA held two public hearings on Notice 75-38 (Washington, D.C. on March 18, 1976, and Seattle, Washington on March 25, 1976). The FAA also extended the comment period so that relevant comments submitted during and after the hearings could be considered. Each comment received in response to Notices 75-38 and 75-38A has been considered in the adoption of these amendments. Except where changes are specifically discussed, these amendments and the basis for them are the same as those contained in Notice 75-38.

On February 12, 1974, the FAA issued an invitation to submit proposals for consideration during the Airworthiness Review Program (Notice 74-5; 39 FR 5785; February 15, 1974). Two proposals were received from the ACO recommending that restricted category rotorcraft external-load operations be conducted under the provisions of Part 133, and that Part 91 be amended to allow those

operations to be conducted for compensation or hire.

On February 26, 1975, the FAA issued an invitation to submit proposals for consideration during the Operations Review Program (Notice 75-9; 40 FR 8685; February 28, 1975). The FAA then published a Compilation of Proposals (see Notice 75-9A; 40 FR 24041; June 4, 1975) that would be considered as possible agenda items for the Operations Review Conference held December 1-5, 1975. Included in the Compilation were proposals to bring all rotorcraft external-load operations under Part 133.

The proposals ACO submitted for the Airworthiness Review were deferred for consideration with proposals that also concerned rotorcraft external-load operations appearing in the Operations Review Compilation. The proposals contained in Operations Review Program Notice No. 1 (Notice 75-38; 40 FR 54188; November 20, 1975) are generally based on the FAA's evaluation of proposals submitted for both the Airworthiness and Operations Reviews:

Proposal No.	Review	FAR	Proponent
495	Airworthiness	\$91.39	ACO
510	do	\$133.19	ACO
218	Operations	\$91.39	FAA
219	do	\$91.39	FAA
697	do	\$133.10	FAA
698	do	\$133.11	FAA
699	do	\$133.13	FAA
700	do	\$133.17	FAA
701	do	\$133.19	FAA
703	do	\$133.32	FAA

Specifically, Notice No. 75-38 proposed amending Parts 91 and 133 of the Federal Aviation Regulations (14 CFR Parts 91 and 133) to: (1) require that all rotorcraft external-load operations, currently conducted under Part 91, be conducted under Part 133 regardless of whether they are conducted for compensation or hire; (2) prescribe appropriate operating limitations for restricted category rotorcraft external-load operations under that Part; (3) provide that Operator Certificates issued under Part 133 be effective for 24 months; and (4) except rotorcraft external-load operations from the requirement in § 91.39 which prohibits the operation of restricted category civil aircraft carrying persons or property for compensation or hire.

Because many of the comments received in response to Notice 75-38 discussed the merits of "standard" and "restricted" rotorcraft, a brief explanation of these terms is in order. A "standard" rotorcraft is one having a normal, utility, acrobatic or transport category type certificate issued under §§ 21.21, 21.27, or 21.29, and having a standard airworthiness certificate issued under § 21.183. These rotorcraft are often called "standard category" rotorcraft, and they are identified that way in the following discussion. A "restricted" category rotorcraft is one having a restricted category type certificate issued under § 21.25 and having a restricted category airworthiness certificate issued under § 21.185.

They are called "restricted category" rotorcraft in the following discussion.

The proposal to amend § 91.39(b) and § 91.39(d) drew strong objections, primarily from those operators now certificated under Part 133. Those who oppose this change contend that the FAA would create an unsafe condition by allowing the use of restricted category (particularly military surplus) rotorcraft in Part 133 operations for compensation or hire. They argue that the current distinction between rotorcraft external-load operations conducted in restricted category rotorcraft and those conducted in standard category rotorcraft should be retained. They contend that the operating limitations proposed in Notice 75-38 are inadequate to provide an equivalent level of safety when restricted category rotorcraft are allowed to operate under Part 133.

Restricted category rotorcraft do not comply with all the airworthiness standards in Part 27 for normal category rotorcraft or in Part 29 for transport category rotorcraft. They are type certificated to airworthiness standards that are less stringent than those applicable to a standard category rotorcraft. Under § 21.25, an applicant is entitled to a type certificate for rotorcraft in the restricted category for special purpose operations if he shows that no feature or characteristic makes the rotorcraft unsafe when it is operated under the operating limitations prescribed for its intended use. In addition, § 21.27 allows certain surplus military aircraft to be certificated in the standard category if the applicant shows compliance with the applicable airworthiness certification standards.

Some restricted category rotorcraft brought under Part 133 are surplus military helicopters which have no civil counterpart. The Armed Services specify aircraft requirements and performance capabilities when soliciting aircraft construction bids that are directly and uniquely related to a particular military mission. The mission for a military rotorcraft (and particularly for external-load operations) may be quite similar to the mission of a civil rotorcraft. Other military requirements, however, specify equipment and structural changes that are not appropriate in an aircraft designed for civil use. These requirements may or may not improve the reliability or increase the safety aspects of the aircraft. Thus, while safety is a consideration in designing an aircraft manufactured for military use, it is not an overriding determinant. Therefore, some items must be changed when converting a surplus military rotorcraft to meet the civil requirements.

At the public hearings held in Washington, D.C., and Seattle, Washington, certain commenters argued that the operating limitations in proposed § 91.39(d) were not stringent enough. Essentially, they urged that external-load operations with restricted category rotorcraft should not be conducted over densely populated areas.

The FAA has long held that public demand for a specific kind of aircraft operation (evidence in this proceeding by numerous commenters strongly in favor of Notice 75-38) warrants a balanced set of airworthiness standards and operating rules which will ensure an appropriate level of safety. Based on the comments received and the record of the two public hearings held on Notice 75-38, the FAA has concluded that the operating limitations for restricted category rotorcraft proposed in the notice must be strengthened. The safety of persons and property on the surface will be adequately protected by prohibiting restricted category rotorcraft external-load operations over a densely populated area, in a congested airway or near a busy airport where passenger transport operations are conducted. These limitations are identical to those in § 91.39(d) that now apply to the operation of each restricted category aircraft.

In view of the differences between the airworthiness requirements applied to standard and restricted category rotorcraft, the FAA has adopted the limitations discussed above in a new § 133.45 (e) (rather than in § 91.39(d), as proposed). Those limitations do not apply to external-load operations conducted by standard category rotorcraft. The FAA has concluded that this amendment and the standards now contained in Part 133 will maintain an appropriate level of safety.

In Notice 75-38, the FAA proposed to amend § 91.39(b) to except rotorcraft external-load operations from the prohibition against operating a restricted category rotorcraft for compensation or hire. On further study, the FAA believes that this change may cause a misunderstanding. The FAA intends to make Part 133 applicable to all non-passenger-carrying civil rotorcraft external-load operations conducted in the United States by any person other than as an air carrier (see § 133.1). The FAA does not intend to allow these operations with restricted category rotorcraft under § 91.39 beyond the grace period provided in § 133.11(b). Accordingly, the FAA is adopting a new § 91.39(f) which makes that section inapplicable to Part 133 operations after the grace period expires.

Commenters on both sides of the question of whether or not restricted category rotorcraft should be allowed to operate under Part 133, submitted accident report data in an attempt to support their position. Each side used the data to buttress their arguments that restricted category rotorcraft are either more or less safe than standard category rotorcraft when used in external-load operations. However, the accident data submitted lacked a delineation of aircraft population and exposure figures. Such data is not available from any known source. Therefore, the FAA could make no valid comparison or draw supportable conclusions on the sole basis of the data presented or otherwise available.

Notice 75-38 proposed to amend § 133.1 (Applicability) to make Part 133 applicable to all rotorcraft external-load op-

erations whether or not the operation is conducted for compensation or hire. As adopted, a nonsubstantive editorial change to § 133.1 clearly indicates that Part 133 applies only to civil rotorcraft, and not to public rotorcraft operations.

Several commenters questioned the sufficiency of the 120 days allowed in proposed § 133.11 for issuance of a Rotorcraft External-Load Operator Certificate. These commenters expressed concern that the FAA could not conduct the necessary pre-certification inspections and process the resulting paperwork within the period proposed. The FAA does not agree.

The 120-day period in § 133.11 is adequate to process the anticipated number of applications for Rotorcraft External-Load Operator Certificates. Each operator will apply to the Flight Standards district office having jurisdiction over the area in which the applicant's home base of operation is located. No one district office will be responsible for all applications. In determining a suitable time period for certification of previously uncertificated operators, the FAA also considered the benefits to be derived from Part 133 certification. The FAA believes these benefits should be provided as soon as possible after these amendments became effective. Accordingly, § 133.11 allows 120 days for those operators who now operate under Part 91 to apply for and be issued a certificate under Part 133. They are not allowed, however, to operate for compensation or hire until they have been certificated under Part 133.

The proposal to amend § 133.13 to limit the duration of a Part 133 certificate to 24 calendar months drew objections from several commenters. They contended that the proposal was merely an unjustified encroachment of the FAA on rotorcraft external-load operations, and would impose administrative burdens on both the operators and the FAA. Other commenters stated that the proposals would be acceptable if the renewal process was simple and conducted expeditiously by district offices.

In proposing to limit the duration of a Part 133 certificate in § 133.13, the FAA considered the impact of the action on the inspection and administrative workload of Flight Standards district offices. The increased workload will not be so substantial as to have an adverse effect on the effectiveness of the certification program. Limiting the duration of Part 133 certificates to 24 calendar months, with attendant renewal requirements, will enable district offices to exercise the necessary control over the certificate holders and particularly over the new certificate holders who will now be certificated under Part 133. In addition § 133.13 is amended to provide that a certificate issued before the effective date of this amendment remains in effect for up to 24 calendar months after that date.

Although not treated in the notice, § 133.3(f) must be amended to make it clear that standard category rotorcraft may continue to be operated over con-

gested areas. This is necessary, because § 133.45(e) as adopted prohibits restricted category rotorcraft external-load operation over a densely populated area, in a congested airway or near a busy airport where passenger transport operations are conducted.

No adverse comments were received on the proposed change to § 91.79(c) which would except rotorcraft used in Part 133 external-load operations from the minimum altitude requirements of that section. On further study, the FAA has determined that it is more appropriate to provide this relief through an amendment to § 133.31. A similar approach was taken with respect to agricultural operations in § 137.49, and keeps the number of cross-references to other Parts to a minimum in Part 133.

A proposed change to § 133.43(c) would apply the weight and center of gravity limitations of that section to rotorcraft type certificated in the restricted category under § 21.25. This is no longer necessary because § 133.43 was amended as part of the Airworthiness Review Program (see Amendment No. 133-5; 41 FR 55454; December 20, 1976).

No adverse comments were received on the proposed change to § 133.51. This amendment will confine the applicability of § 133.51 to a standard category rotorcraft. A separate airworthiness certificate is not necessary for rotorcraft certificated in the restricted category for the purpose of carrying external loads.

In addition to the major revisions to Part 133 discussed above, other minor or clarifying changes have been made that were not discussed in Notice 75-38. Section 133.15 is amended to include certificate renewal procedures similar to the procedures currently in that section for initial certification. Section 133.19 is amended to clarify the fact that the exclusive use prerequisite to Part 133 certification requires a rotorcraft with either a valid standard category or a valid restricted category airworthiness certificate.

Interested persons have been afforded an opportunity to participate in the making of this rule, and due consideration has been given to all relevant matter presented.

The principal authors of this document are Clifford L. Weaver, Flight Standards Service, and Richard B. Ellwell, Office of the Chief Counsel.

Accordingly, Parts 91 and 133 of the Federal Aviation Regulations (14 CFR Parts 91 and 133) are revised, effective August 10, 1977, to read as follows:

1. By amending § 91.39 by inserting a new paragraph (f) to read as follows:

§ 91.39 Restricted category civil aircraft: operating limitations.

(f) After December 9, 1977, this section does not apply to nonpassenger-carrying civil rotorcraft external-load operations conducted under Part 133 of this chapter.

2. By amending § 133.1 to read as follows:

§ 133.1 Applicability.

This part prescribes—

(a) Airworthiness certification rules for rotorcraft used in; and

(b) Operating and certification rules governing the conduct of: nonpassenger-carrying civil rotorcraft external-load operations in the United States by any person (other than as an air carrier). However, this part does not apply to operations conducted under Part 375 of this Title.

3. By amending § 133.11 to read as follows:

§ 133.11 Certificate required.

(a) No person subject to this part may conduct rotorcraft external-load operations within the United States without, or in violation of the terms of, a Rotorcraft External-Load Operator Certificate issued by the Administrator under § 133.17.

(b) A person who does not hold a Rotorcraft External-Load Operator Certificate on August 10, 1977, may conduct rotorcraft external-load operations not for compensation or hire under Part 91 of this chapter until December 9, 1977.

4. By amending § 133.13 to read as follows:

§ 133.13 Duration of certificate.

Unless sooner surrendered, suspended, or revoked, a Rotorcraft External-Load Operator Certificate expires at the end of the twenty-fourth month after the month in which it is issued or renewed, except that a certificate issued before August 10, 1977 expires on August 10, 1979.

5. By amending the heading and § 133.15 to read as follows:

§ 133.15 Application for certificate issuance or renewal.

Application for an original certificate or renewal of a certificate issued under this part is made on a form, and in a manner, prescribed by the Administrator. The form may be obtained from a General Aviation, Air Carrier, or Flight

Standards District Office of the FAA. The completed application is sent to the district office that has jurisdiction over the area in which the applicant's home base of operation is located.

6. By amending § 133.19 by deleting the period at the end of paragraph (a) (2) and inserting a semicolon and the word "and" in place thereof, by revising paragraph (a) (1), and by adding a new paragraph (a) (3) to read as follows:

§ 133.19 Rotorcraft.

(a) The applicant must have the exclusive use of at least one rotorcraft that—

(1) Was type certificated under, and meets the requirements of, Part 27 or 29 of this chapter (but not necessarily with external-load-carrying attaching means installed), or of § 21.25 of this chapter for the special purpose of rotorcraft external-load operations;

(3) Has a valid standard or restricted category airworthiness certificate.

7. By amending § 133.31 by revising the introductory text of paragraph (f) and by adding a new paragraph (g) to read as follows:

§ 133.31 Operating rules.

(f) Notwithstanding any provisions of Part 91 of this chapter, the holder of a Rotorcraft External-Load Operator Certificate may (in rotorcraft type certificated under, and meeting the requirements of, Part 27 or 29 of this chapter including the external-load attaching means) conduct rotorcraft external-load operations over congested areas if those operations are conducted without hazard to persons or property on the surface, and are conducted in compliance with the following: * * *

(g) Notwithstanding Part 91 of this chapter, and except as provided in § 133.45(e), the holder of a Rotorcraft

External-Load Certificate may conduct external-load operations, including approaches, departures, and load positioning maneuvers necessary for the operation, below 500 feet above the surface and closer than 500 feet to persons, vessels, vehicles, and structures, if the operations are conducted without creating a hazard to persons or property on the surface.

8. By amending § 133.45 by adding a new paragraph (e) to read as follows:

§ 133.45 Operating limitations.

(e) No person may conduct an external-load operation under this Part with a rotorcraft type certificated in the restricted category under § 21.25 of this chapter over a densely populated area, in a congested airway, or near a busy airport where passenger transport operations are conducted.

9. By amending § 133.51 to read as follows:

§ 133.51 Airworthiness certification.

A Rotorcraft External-Load Operator Certificate is a current and valid airworthiness certificate for each rotorcraft (fitted with external-load attaching means) type certificated under Part 27 or 29 of this chapter and listed in that certificate, when the rotorcraft is being used in operations under this part or in operations incidental to those operations.

(Secs. 307, 313(a), 601, 603, and 607 of the Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, 1423 and 1427), and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 655(c)).)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Orders 11821, 11949, and OMB Circular A-107.

Issued in Washington, D.C. on May 3, 1977.

QUENTIN S. TAYLOR,
Acting Administrator.

[FR Doc.77-13607 Filed 5-11-77; 8:45 am]

[Docket No. 15176; Amendment Nos. 91-138
and 133-6]

**PART 91—GENERAL OPERATING AND
FLIGHT RULES**

**PART 133—ROTORCRAFT EXTERNAL-
LOAD OPERATIONS**

**Operations Review Program Amendment
No. 2: Rotorcraft External-Load Opera-
tions**

Correction

In FR Doc. 77-13607 appearing at page
24196 of the issue for Thursday, May 12,
1977:

1. In the table in the middle column,
page 24196, the fifth entry under "FAR",
now reading "§ 133.10", should read
"§ 133.1".
2. In the third line from the bottom,
middle column, page 24197, "§ 133.3(f)"
should read "§ 133.31(f)".