DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration
14 CFR Parts 91, 121, 127, and 135

[Docket No. 18313; Amdt. Nos. 91-164, 121-[illegible], 127-40, and 135-5]

Carriage of Candidates in Federal Elections

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: Special Federal Aviation Regulation (SFAR) 37 allows a person who is not in the air transportation business to receive limited payment for carriage of candidates in Federal elections without the carriage being considered a commercial operation, in accordance with regulations issued by the Federal Election Commission (FEC). This amendment codifies the requirements of SFAR 37 into the Federal Aviation Regulations (FAR). Conforming amendments are made to those provisions of the FAR which concern domestic, flag, and supplemental air carriers, commercial operators, scheduled air carriers with helicopters, and air taxi operators to make it clear that those parts do not apply to the operations covered by the new regulation.

EFFECTIVE DATE: July 1, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Harold E. Smith, Regulatory Projects Branch (AVS-24), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; Telephone: (202) 755-8716.

SUPPLEMENTARY INFORMATION:

Background

SFAR 37, which became effective September 26, 1978, was issued to resolve a conflict that was created when compliance with the regulations of the FEC resulted in a violation of the FAR. Under the rules of the FEC, a candidate in a Federal election must pay for carriage in an aircraft. More specifically, the FEC rules state, in part, that when a candidate, candidate's agent, or person traveling on behalf of a candidate uses an airplane which is owned or leased by a corporation or labor organization, he or she must reimburse the aircraft operator. In the case of travel to a city served by regularly scheduled commercial service, reimbursement must be the first-class air fare. In the case of travel to a city not served by regularly scheduled commercial service, reimbursement must be the usual charter rate.

Under the FAR, an aircraft operated without compensation is operated pursuant to 14 CFR Part 91, General Operating and Flight Rules. If an operator receives compensation, he or she must have an appropriate operating certificate pursuant to Part 121, 127, or 135 of the FAR. Before FEC regulations affecting the carriage of candidates were promulgated in 1977, operators were not restricted in the carriage of candidates without compensation; however, after the FEC regulations were issued, candidates were required to make payment to operators who carried them. Instances have occurred in which individuals or corporations operating aircraft have desired to carry a candidate without charge, but the candidate would be required to compensate the operator to comply with the rules of the FEC. Receipt of payment by an aircraft operator without an appropriate operating certificate would result in a violation of the FAR. Therefore, a situation was created in which compliance with the regulations of the FEC results in a violation of the requirements of the FAR. SFAR 37 was issued to harmonize the rules of the FAA and the FEC consistent with the President's regulatory reform philosophy (Executive Order 12044).

SFAR 37 invited the public to submit their views to the FAA for inclusion in the rules docket. Sixty-three comments have been received, the vast majority of which were submitted by air taxi and commercial operators. A letter from the FEC commends the FAA for making it easier for pilots, aircraft owners, and Federal candidates to comply with FEC regulations and those of the FAA by eliminating a point of conflict between the regulations of the two agencies. One commenter states that it would be in the public interest to incorporate the SFAR into the regulations to relieve a restriction and make FAA rules consistent with FEC rules.

The commenters' principal objection to SFAR 37 is that the rule encourages unsafe operations since it does not impose the certification requirements applicable to commercial operators.

As stated previously, an operation for compensation generally requires an appropriate operating certificate. However, the carriage of candidates by an aircraft operator not in the air transportation business for a limited form of payment is not considered a commercial operation. The mere fact that payment is received by the operator because it is compelled by the FEC's rules does not mean that the operator should be regulated like an air carrier or commercial operator. Payment is sharply limited by the FEC, the recovery generally not even meeting expenses incurred for the flight. In addition, the operators affected by these amendments are a limited group, and their carriage of candidates is conducted on an infrequent basis for only short periods of time every few years. These operators are no different from anyone else flying under the general operating rules of the FAR because they are not engaged in the business of carrying passengers.

An adequate level of safety will be maintained because all operations conducted under these amendments will be governed by the provisions of FAR Part 91. This Part governs the majority of aircraft operations conducted by U.S.-registered aircraft, and all operations conducted within the United States. Part 91 adequately provides for the safety of aircraft operations by requiring that aircraft be maintained and operated in a safe manner. It provides, for example, that no person may operate an aircraft unless it has had an annual inspection and has been maintained in an airworthy condition between inspections. In the case of large and turbine-powered (turbojet and turboprop) multiengine airplanes, the owner and operator must follow one of five detailed programs for the inspection of that airplane. From an operational standpoint, Part 91 prescribes standards in the following areas, among others: use of seat belts; fuel requirements for flight both under VFR and in IFR conditions; transponder and altitude reporting equipment and use; and supplemental oxygen requirements. In addition, the provisions of FAR Part 61, Certification: Pilots and Flight Instructors, require each crewmember to maintain currency and be fully qualified for the type of operation to be conducted. Part 61 contains, among other things, proficiency check requirements and recent flight experience requirements for pilots in command, as well as qualification requirements for persons serving as second in command. Accordingly, the FAA does not agree that these amendments, which allow the carriage of candidates for payment to be conducted under Part 91, will encourage unsafe operations.

Another group of commenters states that SFAR 37 promotes unfair competition since air taxi and

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VS-80-246-R

commercial operators, unlike their counterparts who operate under the SFAR, must bear a considerable expense in complying with FAA-imposed regulations under Part 135. The FAA does not agree with this view. The carriage of candidates in Federal elections is infrequent and the operator who is involved in such carriage does not intend to engage in the business of being an air carrier or commercial operator. These operators are accepting payment only because FEC rules require them to do so. They are not flying for profit but instead are receiving a limited form of compensation which in virtually all cases would not cover the total direct and indirect expenses of the flight. These operators are not holding themselves out to the public for business, but are rather involved in private arrangements with candidates with whom they are oftentimes well acquainted on a personal level. It must be emphasized that an operator carrying political candidates in accordance with this regulation would be required to comply with Part 121, 127, or 135 of the FAR if more than the minimal compensation required by the FEC regulations is received.

Another objection to the SFAR is that it was implemented without proper notice and solicitation of comment. However, adequate legal justification was set forth in the SFAR for proceeding without notice. A finding of good cause was made for dispensing with notice and public procedure, and this finding was in compliance with the requirements of the Administrative Procedure Act. The FAA, in accordance with Department of Transportation policy, solicited post-issuance comments which have been considered.

Several commenters point out that operators under SFAR 37 could suffer serious repercussions in the event of an accident because of insurance problems, as most policies for the operation of business and pleasure aircraft do not cover flights for hire. Insurance coverage is a private matter which every Part 91 operator must consider, and with which the FAA does not generally concern itself. It should be noted, however, that operators who are affected by this amendment are usually knowledgeable corporations which have their aircraft insurance program reviewed by competent underwriters. Insurance coverage can be arranged to accommodate these infrequent operations in the same manner as it is arranged for operations under Subpart D of Part 91 where a limited form of compensation is allowed.

Description of the Amendments

Part 91 is amended to provide that an aircraft operator, other than one operating an aircraft under the rules of Part 121, 127, or 135, may receive payment for the carriage of a candidate in a Federal election, an agent of the candidate, or a person traveling on behalf of the candidate while operating under the rules of that Part. The operator's primary business may not be that of an air carrier or commercial operator, the carriage must be conducted under the rules of Part 91, and the payment for the carriage must be required by regulations of the FEC. Parts 121, 127, and 135 are amended to make it clear that they do not apply to the operations described in this new Part 91 regulation.

Need for Immediate Adoption

Due to the imminent Federal election campaigns of 1980, I find that the reasons which justified the adoption of SFAR 37 still exist. Since these amendments continue the provisions of a currently operative SFAR and impose no additional burden on any person, I find that notice and public procedure are impracticable and contrary to the public interest and that good cause exists for making them effective in less than 30 days.

The Amendments

Accordingly, the Federal Aviation Administration amends Parts 91, 121, 127, and 135 of the Federal Aviation Regulations effective July 1, 1980 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. By adding a new § 91.59 to read as follows:

§ 91.59 Carriage of candidates in Federal elections.

(a) An aircraft operator, other than one operating an aircraft under the rules of Part 121, 127, or 135 of this chapter, may receive payment for the carriage of a candidate in a Federal election, an agent of the candidate, or a person traveling on behalf of the candidate, if—

(1) That operator's primary business is not as an air carrier or commercial operator;

(2) The carriage is conducted under the rules of Part 91; and

(3) The payment for the carriage is required, and does not exceed the amount required to be paid, by regulations of the Federal Election Commission (11 CFR et seq.).

(b) For the purposes of this section, the terms "candidate" and "election" have the same meaning as that set forth in the regulations of the Federal Election Commission.

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

2. By amending § 121.1 by adding a new paragraph (f) as follows:

§ 121.1 Applicability

* * * * *

(f) This Part does not apply to operations conducted under § 91.59.

PART 127—CERTIFICATION AND OPERATIONS OF SCHEDULED AIR CARRIERS WITH HELICOPTERS

3. By amending § 127.1 by designating the current provision as paragraph (a) and adding a new paragraph (b) as follows:

§ 127.1 Applicability.

* * * * *

(b) This Part does not apply to operations conducted under the provisions of § 91.59.

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PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

4. By revising § 135.1(b)(10) to read as follows:

§ 135.1 [Amended]

* * * * *

(b) * * *

(10) This Part does not apply to operations conducted under the provisions of § 91.59.

(Secs. 313(a), 601, and 604 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1424); Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA has determined that the expected impact of the regulation is so minimal that it does not require an evaluation.

Issued in Washington, D.C., on June 23, 1980.

Langhorne Bond,

Administrator.

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