FS-43
Reg File

Advance copy pending issuance of changes to Parts 61 and 91.

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

SUBCHAPTER D—AIRMEN

[Docket No. 6831; Amdts. 61-22, 91-29]

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

SUBCHAPTER F—AIR TRAFFIC AND GENERAL OPERATING RULES

PART 91—GENERAL OPERATING AND FLIGHT RULES

Civil Aircraft of U.S. Registry Operated Outside U.S.

The purpose of these amendments is to prescribe rules applicable to civil aircraft of U.S. registry operated outside of the United States. The amendments were proposed in Notice 65-19 and published in the FEDERAL REGISTER on August 13, 1965 (30 F.R. 10116).

Two of the three public comments received on the Notice concurred with it. The third comment, made by a pilots organization, offered no serious objection but made several observations on difficulties that might be encountered by general aviation pilots while flying outside the United States. First, it was stated, these pilots might not be in a location where they could obtain mechanical help or parts promptly following Agency issuance of an Airworthiness Directive, or might not even be aware of its issuance. It must be observed that § 39.3 of Part 39 (Airworthiness Directives), which prohibits operation of a product to which an airworthiness directive applies, except in accordance with the requirements of that airworthiness directive, is not limited to operations in the United States, and compliance with this provision is necessary to retain the validity of an airworthiness certificate. In view of this provision, it is the aircraft operator's responsibility to observe these directives, that can be brought to the attention of persons affected in no more feasible manner than the customary publication. To emphasize this responsibility of the aircraft operator, the accompanying amendments, by an addition to § 91.163, call attention to the obligation to comply with Part 39. Second, this comment asserted that regulations in some foreign countries are difficult to obtain or, in a few cases, unrealistic for small aircraft, and as a result an operator might unwittingly violate some unknown or unrealistic regulation, until the International Civil Aviation Organization (ICAO) adopts uniform standards for general aviation aircraft. However, as stated in the notice, this country is obligated under the Chicago Convention to require the operators of civil aircraft of United States registry in a foreign country to comply with the rules and regulations relating to flight and maneuver of aircraft there in force. Also, compliance with Annex 2 to the Chicago Convention (Rules of the Air) will in most cases meet the requirements of foreign countries in this respect.

One of the comments concurring with the proposal pointed out that Parts 40, 41, and 42 of the Civil Air Regulations provided that, unless otherwise specified in the air carrier rules or the operations specifications of an air carrier, Parts 43 and 60 of the CAR's, Annex 2 (Rules of the Air) to the Chicago Convention, or air traffic rules of the foreign government and local airport rules, would be complied with, as applicable, except where any rule of the operating part (formerly Parts 40, 41, and 42—now Part 121 of the FAR's) was more restrictive and could be followed without violating the Annex 2 or foreign rules. It was requested that these provisions, formerly in Parts 40, 41, and 42, be incorporated in Part 121 at the same time that the proposed changes are made in Part 91. As stated in the preamble to the amendment adding Part 121 to the Federal Aviation Regulations, effective April 1, 1965 (29 F.R. 19186, Dec. 31, 1964), § 121.11 was rewritten to delete the reference to Part 91 and the requirement that certain certificate holders must comply with the ICAO rules when over the high seas. The deletion was made since the provisions simply repeated requirements now already contained in Part 91 that are applicable to all aircraft, including air carrier aircraft. Section 91.1, as now changed, continues to apply to air carrier aircraft, and to adopt the suggestion made in the comment would be to reintroduce into Part 121 matter that was intentionally deleted from that part.

As stated in the notice, these amendments complete the process of making the general operating and maintenance rules of Subparts A (except §§ 91.15(b), 91.17, 91.38, and 91.43) and C of Part 91 applicable to civil aircraft of U.S. registry operated outside of, as well as within, the United States. At the same time, these amendments implement compliance with the obligations of the United States under section 1102 of the Federal Aviation Act of 1958 and the Convention on International Civil Aviation (Chicago Convention).

Section 1102 of the Federal Aviation Act of 1958 requires the Administrator to exercise his powers and perform his duties under the Act, "consistently with any obligation assumed by the United States in any treaty, convention, or agreement that may be in force between the United States and any foreign country or foreign countries, and [to] take into consideration any applicable laws and requirements of foreign countries * * *."

As a party to the Chicago Convention, the United States has assumed certain obligations with regard to the airworthiness and operations of civil aircraft of U.S. registry outside of the United States. One purpose of the rules made by these amendments is to assure that the operation of civil aircraft of U.S. registry outside of the United States is in conformity with this country's obligations under the Chicago Convention.

Under Article 12 of the Convention the United States is obligated to adopt measures to insure that "every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and maneuver of aircraft there in force," as well as to undertake "to insure the prosecution of all persons violating the regulations applicable." Article 12 also provides that the rules of flight over the high seas shall be those established under the Convention. Section 91.1(b) of the Federal Aviation Regulations (formerly § 60.1a of the Civil Air Regulations) presently requires aircraft of U.S. registry to comply with these rules (set forth in ICAO Annex 2). These amendments provide a regulatory requirement for these aircraft to comply with local flight rules when operating in foreign countries.

To accomplish these purposes, the following amendments are made:

1. *Aircraft operation within foreign countries.* Section 91.1 is revised to require each person operating a civil aircraft of U.S. registry in a foreign country to comply with the rules and regulations relating to the flight and maneuver of aircraft there in force. Section 91.1(b) (formerly § 60.1a of the Civil Air Regulations) has required each person operating an aircraft of U.S. registry in air commerce over the high seas to comply with Annex 2 (Rules of the Air) to the Chicago Convention. Since this country's obligation in this respect pertains only to civil aircraft of U.S. registry over the high seas, this requirement is revised to make it conform with the Convention.

2. *Airworthiness.* Sections 91.27 through 91.31 of Part 91 prescribe rules designed to assure that civil aircraft of U.S. registry are properly certificated and in an airworthy condition. Section 91.163(b) of Subpart C further is intended to assure the continued airworthiness of these aircraft by requiring maintenance, preventive maintenance, and alterations to be performed in accordance with that subpart and other applicable rules, including Part 43 of the Federal Aviation Regulations. These Part 91 rules in terms have been applicable only to civil aircraft of U.S. registry operating within the United States. However, it should be noted that under § 21.181(a) of the Federal Aviation Regulations the maintenance, preventive maintenance, and alteration requirements of Parts 91

(As published in the Federal Register [31 F.R. 8354] on June 15, 1966)

1541 [1018]

Part 91

and 43 must be complied with if an airworthiness certificate is to remain effective. To meet this country's responsibility under Articles 29 and 31 of the Chicago Convention, and to assure the continued airworthiness of civil aircraft of U.S. registry operated in foreign countries, §§ 91.27 through 91.31 and Subpart C of Part 91 are now made applicable to these aircraft operated outside of the United States.

3. *Other general operating rules.* Of the other rules of Subpart A of Part 91, four already have been applicable to operation of aircraft of U.S. registry outside of the United States. All of the rules of this subpart (other than §§ 91.15 (b), 91.17, 91.38, and 91.43) are now being made applicable to operations outside of the United States, so as to make the same standards govern there as within the United States. However, in conformance with the obligations under the Chicago Convention, all of these rules apply only to civil aircraft of U.S. registry. Excepted from applicability are § 91.15(b) that requires parachute jumps to be made in accordance with Part 105 of the Federal Aviation Regulations which in turn is applicable only within the United States, § 91.17 that prohibits towing anything by aircraft without a waiver issued by the Administrator, and §§ 91.43 and 91.38 that respectively provide special rules for foreign civil aircraft within the United States and certain airplanes operated in Alaska.

Two provisions of the general operating rules of Subpart A are made applicable only within the United States because of reference to waivers issued, or operating limitations imposed by the Administrator. Section 91.17 requires a certificate of waiver issued by the Administrator for towing anything with a civil aircraft. Section 91.39 concerns limitations on operation of restricted category civil aircraft. Paragraph (d) of that section prohibits operation over densely populated areas, in congested airways, and near busy airports where passenger transport operations are conducted, except in accordance with the terms and conditions of a certificate of waiver or special operating limitations issued by the Administrator. These waiver and special limitation provisions should apply only within the United States. Operations under these sections within foreign countries would be subject, of course, to any corresponding applicable rules there in force.

Paragraph (e) of § 91.39 (Restricted category civil aircraft; operating limitations) previously has referred to an application for a certificate of waiver under "this section." This provision, recodified from § 8.31-1 of Civil Aeronautics Manual 8, originally referred to waivers from the prohibitions in § 8.31 of Part 8 of the Civil Air Regulations, recodified as paragraph (c) of § 91.39 and subsequently amended and redesignated paragraph (d). This reference in paragraph (e) is changed to accurately relate to paragraph (d) and not to paragraphs (a), (b), and (c) of the section (under which waivers may not be sought).

4. *Airman competency.* Section 61.3 (a) prohibits a person from acting within the United States as pilot in command or in any other capacity as required pilot flight crewmember of a civil aircraft of U.S. registry unless he has in his personal possession a current pilot certificate issued to him under that Part. To meet this country's responsibility under Article 32 the phrase "within the United States" is deleted from the rule and thus the airman certificate requirements of Part 61 are made applicable to airmen operating civil aircraft of U.S. registry outside of the United States. At the same time, provision is made to allow the use of a current pilot certificate issued by the foreign country within which the aircraft is operated.

Interested persons have been afforded an opportunity to participate in the making of these amendments, and due consideration has been given to all relevant material presented.

In consideration of the foregoing, Parts 61 and 91 of the Federal Aviation Regulations are amended as follows, effective September 19, 1966:

1. By amending paragraph (a) of § 61.3 of Part 61 to read as follows:

§ 61.3 Certificates and ratings required.

(a) *Pilot certificate.* No person may act as a pilot in command or in any other capacity as a required pilot flight crewmember of a civil aircraft of U.S. registry unless he has in his personal possession a current pilot certificate issued to him under this part. However, when the aircraft is operated within a foreign country a current pilot certificate issued by the country in which the aircraft is operated may be used.

* * * * *

2. By amending § 91.1 of Part 91 to read as follows:

§ 91.1 Applicability.

(a) Except as provided in paragraph (b) of this section, this part describes rules governing the operation of aircraft (other than moored balloons, kites, unmanned rockets, and unmanned free balloons) within the United States.

(b) Each person operating a civil aircraft of U.S. registry outside of the United States shall—

(1) When over the high seas, comply with Annex 2 (Rules of the Air) to the Convention on International Civil Aviation;

(2) When within a foreign country, comply with the regulations relating to the flight and maneuver of aircraft there in force; and

(3) Except for §§ 91.15(b), 91.17, 91.38, and 91.43, comply with Subparts A and C of this part so far as they are not inconsistent with applicable regulations of the foreign country where the aircraft is operated or Annex 2 to the Convention on International Civil Aviation.

§ 91.15 [Amended]

3. By amending paragraph (b) of § 91.15 of Part 91 by adding the words "within the United States" after the word "aircraft".

§ 91.17 [Amended]

4. By amending paragraph (a) of § 91.17 of Part 91 by adding the words "within the United States" after the words "that aircraft".

§ 91.39 [Amended]

5. By amending § 91.39 of Part 91 as follows:

a. By adding the words "within the United States" after the words "civil aircraft" in paragraph (d).

b. By adding the words "paragraph (d) of" after the word "under" in paragraph (e).

6. By amending paragraph (a) of § 91.161 to read as follows:

§ 91.161 Applicability.

(a) This subpart prescribes rules governing the maintenance, preventive maintenance, and alteration of U.S. registered civil aircraft operating within or without the United States.

* * * * *

7. By amending paragraph (a) of § 91.163 to read as follows:

§ 91.163 General.

(a) The owner or operator of an aircraft is primarily responsible for maintaining that aircraft in an airworthy condition, including compliance with Part 39 of this chapter.

* * * * *

(Secs. 307(c), 313(a), 601–610, 1102, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354, 1421–1430, 1502); Articles 12, 29, 31, 32(a), Convention of International Civil Aviation (61 Stat. 1180))

Issued in Washington, D.C., on June 7, 1966.

WILLIAM F. MCKEE,
Administrator.