

## **Title 14—AERONAUTICS AND SPACE**

### **Chapter I—Federal Aviation Agency**

[Docket No. 3084; Amdt, 91-12]

### **PART 91—GENERAL OPERATION AND FLIGHT RULES**

#### **Operating Limitations for Restricted Category Aircraft**

The purpose of this amendment to Part 91 of the Federal Aviation Regulations is to specify clearly the operations authorized in restricted category aircraft, and what persons may be carried on those aircraft.

Part 21 of the Federal Aviation Regulations sets forth requirements (that were formerly set forth in Part 8 of the Civil Air Regulations) for the issuance of restricted category type and airworthiness certificates for aircraft that are intended to be operated for agricultural, industrial, or other "special" purposes. Because of the special nature of the intended usage of these aircraft, the airworthiness certification standards for them are not designed to provide the same level of safety that is required for aircraft certificated in the standard category. The operating limitations for restricted category aircraft are set forth in § 91.39 of the Federal Aviation Regulations, and are designed to compensate for this, and to provide the necessary level of safety for special purpose operations.

Because of some question as to whether these limitations (and certain provisions of the former Part 8) prohibit a restricted category aircraft from being operated for other than the special purpose for which it was certificated, the Agency proposed in Notice 64-2 (29 F.R. 477, Jan. 18, 1964) to delete § 8.0-1(a) of the Civil Air Regulations and to amend § 91.39 to make it clear that this prohibition is intended. It was also proposed to amend § 91.39 to clarify the Agency's intent with regard to the persons that may be carried in restricted category aircraft. The recodification of Part 8 was completed with the adoption of Part 21 of the Federal Aviation Regulations (Certification Procedures for Products and Parts).

Section 8.0-1(a) was deleted in the recodification, and, accordingly, this amendment affects only Part 91.

Some of the comments received on Notice 64-2 simply stated, without more, that the proposal is unnecessary for safety and would impose an unnecessary burden on the operation of restricted category aircraft. Others, more specific, incorrectly assumed that the proposal would limit the use of restricted category aircraft to one special purpose operation. As was the case under Part 8, under Part 21 an aircraft can be certificated in the restricted category for one special purpose or for combinations of special purposes, that usually require modifications in basic aircraft design or increases in maximum weight, or both. Section 91.39(a), as proposed and as adopted, does not place any limitation upon the number of special purposes for which an airplane may be used, but is intended to clearly limit the operation of a restricted category aircraft for the special purpose (or purposes) for which it is certificated, including all operations necessary for the accomplishment of the work activity directly associated with that special purpose (or purposes).

Another comment expressed concern that § 91.39(c), as proposed, would lessen the number of persons whose carriage would be considered essential to the conduct of the special purpose. Again, this amendment is intended to clarify the Agency's intent in this regard, and not to impose additional restrictions. Possibly, the term "ground personnel" in the proposal is the source of this confusion and lends itself to an interpretation that it refers only to personnel directly connected with the operation or maintenance of the aircraft. The intent of the amendment is somewhat broader than this. To better reflect the Agency's intent in this regard, the rule adopted herein permits the carriage of (in addition to a flight crewmember or flight crewmember trainee) a person who "performs an essential function in connection with a special purpose operation for which the aircraft is certificated", or one who is "necessary for the accomplishment of the work activity directly associated with that special purpose." Thus, the rule envisages that persons connected with the special purpose operation could

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be carried either during the actual special purpose operation, or during other operations "necessary for the accomplishment of the work activity directly associated with the special purpose for which the aircraft is certificated." For example, a farmer contracting for crop dusting may have to go up in the aircraft either during or before the actual operation to show which field should be dusted; or a surveyor, inspector, insurance agent, etc., might have to be carried to the scene of operations. During some intricate sling installations by helicopter, a technician, aboard to give advice or check on the installation, could be considered "necessary" under the rule.

Another comment asserted that the proposed deletion of the phrase "in a special purpose operation" from § 91.39 (c) (redesignated herein as § 91.39(d)), would bar restricted category aircraft from operating from bases near a busy airport. The Agency disagrees. That section presently prohibits operation of a restricted category aircraft in certain areas including those "Near a busy airport where passenger transport operations are conducted." The deletion of the phrase in question is intended to remove any inference that a restricted category aircraft may be operated in other than the special purpose operation (or operations) for which it is certificated, or that it may be operated in the areas prohibited by present § 91.39(c). The phrase is redundant and its deletion will not prohibit any operation that is presently permitted under the rule.

Another comment from the holder of a restricted category type certificate for a large surplus military airplane proposed adding as an approved special purpose the "carriage of property owned by the owner or lessee of the aircraft or used in support of his business." Such an addition, it was contended, would be consistent with the existing prohibition against the carriage of cargo for compensation or hire. The effect of this proposal would be to permit the certification of an airplane in the restricted category for the primary purpose of carrying ordinary cargo used in the course of the operator's business. This would not be a "special" purpose within the meaning of § 21.25 nor would the proposal be consistent with the way Part 8 was interpreted and administered until its recodification. This position was reiterated by the Agency in justifying the need for Part 9a of the Civil Air Regulations (recodified as § 21.27 of the Federal Aviation Regulations). In the preamble to the notice of proposed rule-making thereon (Notice 63-18; 28 F.R. 3555), the Agency pointed out that:

Certification in accordance with current Part 8, however, permits only special purpose operations. In some cases, especially those involving large aircraft, the type of operation contemplated, e.g., unrestricted carriage of cargo, does not qualify as a special purpose.

Part 9a was adopted on December 5, 1963, and, as recodified in Part 21, provides for the certification of surplus military airplanes under that part, and also provides for the operation of the airplanes in question for the unrestricted carriage of cargo.

Other comments received were not directed to the substance of the proposals set forth in Notice 64-2 or raised matters that went beyond their scope.

It should be noted that this amendment applies to all operators of restricted category aircraft, regardless of when their aircraft was certificated.

In consideration of the foregoing, § 91.39 of Part 91 of the Federal Aviation Regulations is amended, effective March 27, 1965, as follows:

1. By redesignating paragraphs (a), (b), (c), and (d), as (b), (c), (d), and (e), respectively.
2. By deleting the phrase "in a special purpose operation" from redesignated paragraph (d).
3. By adding a new paragraph (a), and by amending redesignated paragraph (c) to read as follows:

§ 91.39 Restricted category civil aircraft; operating limitations.

(a) No person may operate a restricted category civil aircraft:

- (1) For other than the special purpose for which it is certificated; or
- (2) In an operation other than one necessary for the accomplishment of the work activity directly associated with that special purpose.

(c) No person may be carried on a restricted category civil aircraft unless:

- (1) He is a flight crewmember;
- (2) He is a flight crewmember trainee;
- (3) He performs an essential function in connection with a special purpose operation for which the aircraft is certificated; or
- (4) He is necessary for the accomplishment of the work activity directly associated with that special purpose.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354, 1421, and 1423))

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N. E. HALABY,  
Administrator.

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