

[Docket No. 9741; Amdts. 61-43; 63-10; 91-66; 121-60; 123-2; 127-10; 135-8]

CARRIAGE OF NARCOTIC DRUGS, MARIHUANA, AND DEPRESSANT AND STIMULANT DRUGS BY AIRCRAFT

The purpose of these amendments to the Federal Aviation Regulations is to prevent the hazardous operation of aircraft by prohibiting the carriage by aircraft of narcotic drugs, marihuana, and depressant and stimulant drugs under certain limited conditions.

These amendments were proposed in Notice 69-32 and published in the *FEDERAL REGISTER* on August 5, 1969 (34 F.R. 12713). Under the notice the FAA proposed:

(1) That violation of the prohibition against carriage be a basis for denying applications for pilot, flight instructor, flight engineer, and flight navigator certificates, and for the suspension or revocation of those airman certificates or of the operating certificates issued under Parts 121, 123, 127, and 135;

(2) A requirement for the filing of a flight plan on all flights between Mexico and the United States;

(3) That conviction for violation of the statutory provisions concerning the prohibited items is also grounds for denying, suspending or revoking those airman certificates.

Two requests were received in response to the proposal for extension of the comment period, and these requests were denied because the public interest considerations involved in this rule required final rule making action at the earliest possible time. Public comments with respect to the substance of the rule were received from five sources. All of them expressed concern that as proposed

§ 91.12(a) would make the aircraft operator a violator even when he does not know of the presence on board the aircraft of a proscribed article. In response to these comments the prohibition against carrying the proscribed items in § 91.12(a) has been clarified to make it a violation of that section only when the operator of the aircraft has knowledge that the aircraft is carrying the proscribed articles. One of the comments urged that additionally the rules should not be applied to air carriers who frequently carry narcotics and other drugs lawfully in their operations. In response to this comment § 91.12(b) has been changed by inclusion of a new paragraph (b) which excepts all lawful carriage.

Another of the comments questioned the legal basis for the adoption of the rule as a safety rule. As stated in the preamble to Notice 69-32, the provisions contained in this rule are necessary to meet and avoid the increasing hazards to safety in air commerce resulting from the increasing use of aircraft for the illicit carriage of narcotics and other drugs into the United States and Mexico. These hazards result from attempts to avoid detection or pursuit by violent maneuvers, low flying, and other extremely dangerous flight techniques, including the use of unsafe landing areas.

In the interests of clarity and conformity with judicial opinions, the phrase "final conviction" has been used in lieu of "conviction" in §§ 61.6(a) and 63.12(a). Finally, editorial and other nonsubstantive changes have been made for the purposes of clarity and continuity.

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Interested persons have been afforded an opportunity to participate in the making of these amendments. Due consideration has been given to all matter presented. In other respects, for the reasons stated in the preamble to the notice, the rule is adopted as prescribed herein.

Since the public interest requires that these amendments be made effective as quickly as possible, I find that good cause exists for making them effective on less than 30 days' notice.

In consideration of the foregoing, Parts 61, 63, 91, 121, 123, 127, and 135 of the Federal Aviation Regulations are amended as follows, effective September 5, 1969:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. Part 61 is amended by inserting a new § 61.6, after § 61.5, to read as follows:

§ 61.6 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs.

(a) No person who is convicted of violating any of the following statutory provisions is eligible for any certificate or rating issued under this part for a period of 1 year after the date of final conviction:

- (1) 21 U.S.C. 174.
- (2) 21 U.S.C. 176a.
- (3) 21 U.S.C. 184a.
- (4) 21 U.S.C. 331(q).
- (5) 21 U.S.C. 360a.
- (6) 26 U.S.C. 4704.
- (7) 26 U.S.C. 4705.
- (8) 26 U.S.C. 4742.
- (9) 26 U.S.C. 4744.
- (10) 26 U.S.C. 4755.

(11) 18 U.S.C. 545, where the conviction involves the smuggling of any "depressant or stimulant drug" as defined in 21 U.S.C. 321(v).

(b) No person who commits an act prohibited by § 91.12(a) of this chapter is eligible for any certificate or rating issued under this part for a period of 1 year after the date of that act.

(c) Any conviction specified in paragraph (a) of this section, or the commission of the act referenced in paragraph (b) of this section, is grounds for suspending or revoking any certificate or rating issued under this part.

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

2. Part 63 is amended by inserting a new § 63.12, after § 63.11, to read as follows:

§ 63.12 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs.

(a) No person who is convicted of violating any of the following statutory provisions is eligible for any certificate or rating issued under this part for a period of 1 year after the date of final conviction:

- (1) 21 U.S.C. 174.
- (2) 21 U.S.C. 176a.
- (3) 21 U.S.C. 184a.

- (4) 21 U.S.C. 331(q).
- (5) 21 U.S.C. 360a.
- (6) 26 U.S.C. 4704.
- (7) 26 U.S.C. 4705.
- (8) 26 U.S.C. 4742.
- (9) 26 U.S.C. 4744.
- (10) 26 U.S.C. 4755.

(11) 18 U.S.C. 545, where the conviction involves the smuggling of any "depressant or stimulant drug" as defined in 21 U.S.C. 321(v).

(b) No person who commits an act prohibited by § 91.12(a) of this chapter is eligible for any certificate or rating issued under this part for a period of 1 year after the date of that act.

(c) Any conviction specified in paragraph (a) of this section, or the commission of the act referenced in paragraph (b) of this section, is grounds for suspending or revoking any certificate or rating issued under this part.

PART 91—GENERAL OPERATING AND FLIGHT RULES

3. Part 91 is amended by inserting a new § 91.12, after § 91.11, to read as follows:

§ 91.12 Flights between Mexico and the United States.

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft between Mexico and the United States, with knowledge that any of the following is carried in the aircraft:

- (1) "Narcotic drugs" as defined in 26 U.S.C. 4731(a).
- (2) "Marihuana" as defined in 26 U.S.C. 4761(2).
- (3) "Depressant or stimulant drug" as defined in 21 U.S.C. 321(v).

(b) Paragraph (a) of this section does not apply to any carriage of narcotic drugs, marihuana, or depressant or stimulant drug authorized by or under any Federal statute, or by any Federal agency.

(c) Each person operating a civil aircraft on a flight between Mexico and the United States, shall comply with all of the requirements of Subpart A of Part 99 of this chapter, notwithstanding § 99.1(b) (1) and (3). If the aircraft does not have a two-way radio, that person shall, in addition to complying with § 99.1(c) of this chapter, land at the designated airport of entry nearest the point of entry into the United States, and file an arrival or completion notice.

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

4. By amending Part 121 as follows:

§ 121.13 [Amended]

a. By inserting the figures "121.15," after the figures "121.11," in paragraph (a) of § 121.13.

b. By inserting a new § 121.15, after § 121.13, to read as follows:

§ 121.15 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs.

If the holder of a certificate issued under this part permits any aircraft owned or leased by that holder to be engaged in any operation that the certificate holder knows to be in violation of § 91.12(a) of this chapter, that operation is a basis for suspending or revoking the certificate.

PART 123—CERTIFICATION AND OPERATIONS: AIR TRAVEL CLUBS USING LARGE AIRPLANES

5. By inserting a new § 123.20, after § 123.19, to read as follows:

§ 123.20 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs.

If the holder of a certificate issued under this part permits any aircraft owned or leased by that holder to be engaged in any operation that the certificate holder knows to be in violation of § 91.12(a) of this chapter, that operation is a basis for suspending or revoking the certificate.

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

6. By inserting a new § 127.22, after § 127.21, to read as follows:

§ 127.22 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs.

If the holder of a certificate issued under this part permits any aircraft owned or leased by that holder to be engaged in any operation that the certificate holder knows to be in violation of § 91.12(a) of this chapter, that operation is a basis for suspending or revoking the certificate.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS OF SMALL AIRCRAFT

7. By inserting a new § 135.12, after § 135.11, to read as follows:

§ 135.12 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs.

If the holder of a certificate issued under this part permits any aircraft owned or leased by that holder to be engaged in any operation that the certificate holder knows to be in violation of § 91.12(a) of this chapter, that operation is a basis for suspending or revoking the certificate.

(Secs. 307(c), 313(a), 601, 602, 604, Federal Aviation Act of 1958 (49 U.S.C. 1354, 1421, 1422, 1423, 1424); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Washington, D.C., on August 27, 1969.

D. D. THOMAS,
Deputy Administrator.

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