

Docket No. 18510, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments in triplicate to: Federal Aviation Administration, Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in the Rule Dockets weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. **FOR FURTHER INFORMATION CONTACT:** Mr. Gary Davis, Project Development Branch, AFS-24, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267-8096.

**SUPPLEMENTARY INFORMATION:****Background**

On December 12, 1978, the FAA issued SFAR 38 [43 FR 58366; December 14, 1978] as a consequence of the Airline Deregulation Act of 1978 (ADA or Act) (Pub. L. 95-504, 92 Stat. 1705). That act expresses the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the Civil Aeronautics Board (CAB) be abolished on December 31, 1984, and that certain of its functions cease before that date. Anticipating its sunset, the CAB itself curtailed or suspended much of its regulatory activity during the period 1979-1984. By January 1, 1985, the remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulations relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition to the change in economic regulatory activities. This action was consistent with the Congressional directive contained in Section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standard of safety in air transportation that existed when the ADA was enacted. SFAR 38 [43 FR 58366; December 14, 1978] set forth FAA certification and operating requirements applicable to all "air commerce" and "air transportation" operations for "compensation or hire." (SFAR 38 did not address Part 133 External Load Operations, Part 137 Agriculture Aircraft Operations, or Part 91 training and other special purpose operations.)

On December 27, 1984, the FAA issued SFAR 38-1 [50 FR 450; January 4, 1985], which merely extended the

termination date of SFAR 38 and allowed the FAA time to propose and receive comments on revising SFAR 38.

On May 28, 1985, the FAA issued SFAR 38-2 [50 FR 23941; June 7, 1985], which updated SFAR 38 in light of changes since 1978 and clarified provisions stating which FAA regulations apply to each operator (including air carriers) and each type of operation. This action was necessary because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were rigidly compartmentalized, and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (e.g., supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized by the FAA. Thus, it was necessary for the FAA to establish guidelines to determine what safety standards were applicable to an operator's particular operation.

Since that time, the FAA has proposed rulemaking to codify the certification and operations specifications requirements currently found in SFAR 38-2 into a new part 119 [Notice No. 88-16] [53 FR 39852; October 12, 1988].

On April 11, 1990, the FAA reopened the comment period for Notice No. 88-16 [55 FR 14404; April 17, 1990] for comments on the definition of "scheduled operation" and the notification requirement for changes to operations specifications for a period of 30 days. The reopened comment period closed May 17, 1990. Based on the complexity of comments received, the FAA subsequently published an SNPRM on June 8, 1993 [58 FR 32248]; the comment period closed July 23, 1993.

Recently the FAA issued a notice proposing that many part 121 requirements should be imposed on certain part 135 operators [60 FR 16230; March 29, 1995]. If that proposal is adopted, the rules specifying the applicability of parts 121, 125, and 135 would be codified in a new part 119. In that same NPRM, the FAA proposed to rescind SFAR 38-2 if a final rule affecting commuter operators and establishing a new part 119 is issued. However, in the meantime, SFAR 38-2 contains the current requirements for certification and operations

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration**

14 CFR Parts 121, 125, 127, 129, and 135

[Docket No. 18510; SFAR No. 38-11]

RIN 2120-AF73

**Special Federal Aviation Regulation No. 38-2; Certification and Operating Requirements**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment establishes a new termination date for Special Federal Aviation Regulation [SFAR] No. 38-2, which contains the certification and operating requirements for persons transporting passengers or cargo for compensation or hire. The current termination date for SFAR 38-2 is June 1, 1995. Because the FAA has not completed a rulemaking process to consolidate and codify the certification and operations specifications requirements, an extension of the termination date is necessary. If this rulemaking process is completed before the new termination date of June 1, 1996, the FAA intends to rescind SFAR 38-2 as part of that rulemaking.

**DATES:** Effective June 1, 1995, SFAR 38-2 terminates June 1, 1996.

Comments must be received on or before August 1, 1995.

**ADDRESSES:** Send comments on the rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10),

specifications. Thus, the FAA finds it necessary to extend the SFAR until June 1, 1996.

#### Good Cause Justification for Immediate Adoption

The reasons which justify the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to establish a new termination date for SFAR 38-2 of June 1, 1996. If the FAA publishes a final rule adopting a new part 119 into the Federal Aviation Regulations before the termination date, that rulemaking will rescind SFAR 38-2. This action is necessary to permit continued operations under SFAR 38-2 and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

For this reason, and because this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures are unnecessary, impracticable, and contrary to the public interest, and that the amendment should be made effective in less than 30 days after publication. However, interested persons are invited to submit such comments as they desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the rules docket for examination by interested parties.

#### Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

This rule will not impose any additional incremental costs over those that would have been incurred when SFAR 38-2 was first issued. Therefore, I certify that the amendment will not have a significant economic impact on a substantial number of small entities.

#### International Trade Impact Analysis

The FAA finds this amendment will have no impact on international trade.

#### Paperwork Reduction Act

Information collection requirements in this SFAR have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0008.

#### Federalism Implications

The amendment herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have sufficient federalism applications to warrant the preparation of a Federalism Assessment.

#### Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that this action is not significant under Executive Order 12866; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and the anticipated impact is so minimal that a full regulatory evaluation is not required.

#### List of Subjects

##### 14 CFR Part 121

Air carrier, Aircraft, Airmen, Air transportation, Aviation safety.

##### 14 CFR Part 125

Aircraft, Airmen, Airports, Airspace, Air traffic control, Air transportation, Chemicals, Children, Drugs, Flammable materials, Handicapped, Hazardous materials, Infants, Smoking.

##### 14 CFR Part 127

Air carriers, Aircraft, Airmen, Airworthiness.

##### 14 CFR Part 129

Air carriers, Aircraft, Airmen, Air transportation, Aviation safety, Safety.

##### 14 CFR Part 135

Air carriers, Aircraft, Airmen, Air taxis, Air transportation, Airworthiness, Aviation safety, Safety.

#### Adoption of the Amendment

In consideration of the foregoing SFAR 38-2 (14 CFR parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is amended as follows: •

#### PART 121—[AMENDED]

1. The authority citation for part 121 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40105, 40113, 44701-44702, and 44704-44705.

#### PART 125—[AMENDED]

2. The authority citation for part 125 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40105, 44113, 44701-44705, 44707-44714, 44716-44717, and 44722.

#### PART 127—[AMENDED]

3. The authority citation for part 127 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44705, 44710-44711, and 44713.

#### PART 129—[AMENDED]

4. The authority citation for part 129 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1511-1522, 40101, 40103-40105, 40113, 40119, 44701, 44901-44904, 44906, 44912, 44914, 44935-44939, and 48107.

#### PART 135—[AMENDED]

5. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40105, 44113, 44701-44705, 44707-44717, 44722, and 45303.

6. Special Federal Aviation Regulation No. 38-2 is amended by removing the words "June 1, 1995" in the last paragraph, and by adding in their place the words "June 1, 1996."

Issued in Washington, DC, on May 31, 1995.

David R. Hinson,  
Administrator.

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