

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

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

[Docket No. 18510; SFAR No. 38-3]

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

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

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

**SUMMARY:** This amendment extends the effectiveness of Special Federal Aviation Regulation (SFAR) No. 38-2 (50 FR 23941; June 7, 1985). SFAR 38-2 revised SFAR 38 primarily by specifying and clarifying FAA requirements for operating certificates and operations specifications for persons who operate under Federal Aviation Regulations (FAR) Parts 121 and 135. The amendment brought SFAR 38 up to date in view of changes in the regulations and the aviation industry that had occurred since it was issued in 1978 and also as part of the FAA's response to the sunset of the Civil Aeronautics Board (CAB). Having generally reviewed the FAA regulations to determine the most appropriate response to the Airline Deregulation Act of 1978 (ADA) and the termination of CAB functions attendant on the CAB sunset, the FAA now concludes that it is necessary to extend the termination date of SFAR 38-2 to allow time for the FAA, in a separate rulemaking action, to propose and receive comments on the incorporation of SFAR 38-2 into the FAR. The termination date for SFAR 38-2 is extended to June 1, 1987. The FAA intends to publish a notice rescinding SFAR 38-2 and a final rule incorporating SFAR 38-2 into the FAR concurrently in the Federal Register.

**DATES:** Effective date May 8, 1986. Comments must be received on or before June 9, 1986.

**ADDRESSES:** Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 18518, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments in duplicate to: Federal Aviation Administration, Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Michael Coffey, Project Development Branch, AFS-240, Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 426-8096.

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

On December 12, 1978, the FAA promulgated SFAR 38 in consequence of the ADA (Pub. L. 95-504, 92 Stat. 1705). That Act embodies 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 CAB be abolished on December 31, 1984. Anticipating its sunset, the CAB curtailed or suspended much of its regulatory activity during the period 1979-1984. On October 4, 1984, additional legislation was enacted further defining the process of CAB sunset. On January 1, 1985, those remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulation relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition from CAB and FAA interlocking authority to a regulatory regime with no CAB in existence. 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 which existed when the ADA was enacted. SFAR 38 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 adopted SFAR 38-1 which merely extended the termination date of the regulation, and allowed the FAA time to propose and receive comments on revising SFAR 38.

On May 28, 1985, the FAA adopted SFAR 38-2, which updated SFAR 38 in light of changes since 1978 and clarified provisions that state which FAA regulations apply to each air carrier 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 fairly rigidly compartmentalized and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (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 air carrier's particular operation.

**Good Cause Justification for Immediate Adoption**

The termination date for SFAR 38-2 and the operating certificates issued under SFAR 38, as amended, is May 1, 1986. The reasons which justified the adoption, and the subsequent revision, of SFAR 38 still exist. The FAA is currently preparing a Notice of Proposed Rulemaking (NPRM) which will consolidate the certification rules now in Parts 121 and 135 into a new Part of the FAR. This NPRM will also propose incorporating the necessary portions of SFAR 38-2 into the FAR. Therefore, it is in the public interest to extend the termination date of SFAR 38-2 from May 1, 1986 to June 1, 1987, although the FAA anticipates that a final rule incorporating SFAR 38-2 in the FAR will be published before then. If it is, a notice rescinding SFAR 38-2 will be published concurrently. This action is necessary to permit continued operations under operating certificates issued under SFAR 38, as amended, and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

In addition, since 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 may 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.

#### Trade Impact Statement

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

#### Conclusion

The FAA has determined that this document involves a rule change which imposes no additional burden on any person. Accordingly, it has been determined that: The rule change does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and its anticipated impact is so minimal that a full regulatory evaluation is not required.

#### List of Subjects

##### 14 CFR Part 121

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

##### 14 CFR Part 125

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

##### 14 CFR Part 127

Aircraft, Air carriers, Airworthiness, Airmen.

##### 14 CFR Part 129

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

##### 14 CFR Part 135

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

#### 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 revised as follows:

1. The authority citation for SFAR 38-2 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1423, 1424, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983).

2. In Special Federal Aviation Regulation No. 38-2 in 14 CFR Parts 121, 125, 127, 129, and 135, the last paragraph is amended by removing the words "May 1, 1986, unless sooner superseded of revoked", and adding in place thereof the words, "June 1, 1987, or the effective date of the codification of SFAR 38-2 into the Federal Aviation Regulations, whichever occurs first."

Issued in Washington, D.C., on April 30, 1986.

Donald D. Engen,

Administrator.

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