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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, 65, and 91

[Docket No. 21956; Amdt. Nos. 61-74, 63-23, 65-29, and 91-188]

Use of Alcohol or Drugs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments establish rules governing the use of alcohol or drugs by any crewmember assigned to perform duty during the operation of an aircraft. In addition to maintaining current provisions regarding the use of alcohol or drugs before serving as a crewmember, it delineates the maximum allowable blood alcohol content level. Crewmembers also will be required to furnish the Administrator with the results of any test that is performed that may indicate the percentage of alcohol in the blood or the presence of drugs in the body when such tests have been taken within 4 hours after acting or attempting to act as a crewmember. Failure to furnish or authorize the release of the results of these tests will result in certificate action or other sanctions. These rules are based, in part, on a National Transportation Safety Board determination that alcohol is a cause or factor in about 40 aircraft accidents annually, almost all of which are fatal. These amendments are intended to facilitate enforcement of the present drug and alcohol regulations and to reduce aircraft accidents and incidents attributable to consumption of alcoholic beverages and the use of drugs. For this same purpose, the FAA is proposing elsewhere in this issue of the Federal Register to require crewmembers to submit to tests for alcohol given by law enforcement officers under certain circumstances.

EFFECTIVE DATE: June 17, 1985.

FOR FURTHER INFORMATION CONTACT: Mike Sacrey or Roger Baker, Federal Aviation Administration, General Aviation & Commercial Division, Operations Branch (AFO-820), 800 Independence Avenue, SW., Washington, D.C. 20591; Phone: (202) 426-8194.

SUPPLEMENTARY INFORMATION:

Background

Rules relating to the use of drugs and the consumption of alcoholic beverages in connection with aircraft operations are set forth in § 91.11 of the Federal Aviation Regulations (FAR) (14 CFR 91.11). This section provides that no

person may act as a crewmember of a civil aircraft (1) within 8 hours after the consumption of any alcoholic beverage, (2) while under the influence of alcohol, or (3) while using any drug that affects the faculties in any way contrary to safety. "Crewmember" is defined in FAR Part 1 as "a person assigned to perform duty in an aircraft during flight time." A pilot, flight engineer, flight navigator, or flight attendant is such as person.

The National Transportation Safety Board (NTSB) has recommended that the FAA add an implied consent clause to the FAR and specify an alcohol level at which a pilot would be considered to be under the influence. The General Accounting Office (GAO) made similar recommendations in a Report to Congress by the Comptroller General entitled "Stronger Federal Aviation Administration Requirements Needed to Identify and Reduce Alcohol Use Among Civilian Pilots" (CED-78-58; March 20, 1978).

The FAA is concerned about the serious hazard, during aircraft operations, resulting from impairment of the pilot's faculties due to alcohol. Even small amounts of alcohol affect judgment, coordination, performance, and reaction time. Vision, hearing, touch, information processing, memory, reasoning, and attention span also may be affected by alcohol consumption. Inflight testing of experienced professional aviators has shown that even 40 milligrams percent by weight of alcohol in the blood exerts detrimental effects on performance which are incompatible with flight safety (Report on "The Effects of Alcohol on Pilot Performance During Instrument Flight" by Aviation Medicine Research Laboratory, Ohio State University; FAA Report No., FAA-AM-72-4). Moreover, the effects of alcohol on performance are additive to the expected hypoxic effects with increased altitude.

The ability of a crewmember to function without impairment of performance is an essential element in the safety of flight and in the effectiveness of the air traffic system. Since alcohol can affect the ability of a crewmember to function properly and thus is detrimental to aviation safety, the FAA must make every reasonable effort to prevent those who are under the influence of alcohol from flying.

For a number of years the FAA has expended a substantial amount of time and funds trying to educate the flying public to this danger. As part of this effort, the agency worked closely with groups such as the Aircraft Owners and Pilots Association and the Air Line Pilots Association to establish effective

educational programs. Although these programs have been beneficial, the problem still remains. There continues to be a significant number of accidents each year where alcohol is found to be a factor or cause. For example, in 1979, according to an NTSB study, U.S. general aviation aircraft were involved in 34 accidents where alcohol impairment was a cause/factor, 30 of which were fatal. This represents an 88 percent fatality rate for alcohol-related accidents as compared to a 17 percent fatality rate for all of general aviation. In addition, in recent Congressional testimony, the FAA stated that there were 155 reported accidents from 1980 through 1982 in which evidence of drug carriage was found. Therefore, the FAA must take additional steps to reduce the frequency of these accidents by strengthening the rules relating to the use of alcohol and drugs.

The FAA published Notice of Proposed Rulemaking (NPRM) No. 81-9 on July 27, 1981 (46 FR 38480), proposing regulations that were intended to deter persons from acting or attempting to act as a crewmember while under the influence of alcohol or drugs and to provide a basis for necessary enforcement action. Seventy-four comments were received as a result of the NPRM. These amendments reflect both FAA consideration of those comments and its continuing responsibility to uphold and encourage safety in air commerce.

Blood Alcohol Content

Currently, § 91.11(a) (1) and (2) provides that no person may act as a crewmember of a civil aircraft within 8 hours after the consumption of any alcoholic beverage or while under the influence of alcohol. In response to the recommendations from the NTSB and the GAO, Notice 81-9 proposed a further amendment to that section to prohibit acting as a crewmember while having 40 milligrams percent or more by weight of alcohol in the blood.

Some commenters oppose the proposed 40 milligrams, recommending that a level of 100 milligrams percent by weight, as used in many state motor vehicle statutes, be used instead. A number of other commenters agree that the proposed level is appropriate in view of the high performance required of pilots and the additive effects of alcohol at higher altitudes.

The FAR currently requires strict separation between alcohol and flying. The consumption of any alcohol within 8 hours before acting as a crewmember is prohibited. The FAA is adding a new prohibited level of alcohol which can be

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Administrator to request the results of tests conducted in accordance with Federal, state, or local laws if there is reason to believe the person may have violated § 91.11. Therefore, § 91.11, as adopted, requires that a crewmember furnish or authorize the release of the results of tests taken under the circumstances described. It should be emphasized, however, that the rules as adopted here do not permit the Administrator to require a person to submit to tests to determine the presence of alcohol or drugs. Note that this amendment does not in any way affect the Administrator's authority to request information under § 67.31 regarding a person's qualification for a medical certificate.

Eligibility After Drug Conviction

Sections 61.15, 63.12, and 65.12 currently provide that no person who is convicted of violating any Federal or state statute relating to the growing, processing, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs or substances is eligible for any certificate or rating issued under Part 61, 63, or 65 for a period of 1 year after final conviction, and that such a conviction is grounds for suspension or revocation of any airman certificate (certificate action) issued under these parts. Notice 81-9 proposed amendments to these sections to provide that a conviction for the violation of a Federal or state statute relating to drugs would be grounds for disqualification or certificate action only when the violation involved the use of an aircraft. The proposal was an attempt to remove disqualification for those convictions that do not evidence a disposition towards the irresponsible exercise of airman privileges.

A number of commenters oppose these proposed amendments, stating that while an airman's violation of a drug statute may not have involved the use of an aircraft, it may still indicate a lack of the high standards of integrity, responsibility, and compliance attitude required of airmen. The FAA has reconsidered the proposal in the light of these comments. As indicated by several commenters, violations of the drug laws as set forth in the rule may indicate that the applicant would not be compliance-minded regarding the many safety rules in aviation. The courts have supported this view. The United States Court of Appeals for the Ninth Circuit affirmed the revocation of the private pilot certificate held by a man who had been convicted of possessing marihuana for sale. The court held that there was a rational relationship between a

conviction for possessing drugs for sale and the potential for unsafe use of an aircraft for drug smuggling in the future. *Walters v. McLucas*, 597 F.2d 1230 (9th Cir. 1979). In another case, the United States Court of Appeals for the District of Columbia Circuit affirmed the revocation of the private pilot certificate of a person who had been convicted of conspiring to import marihuana, even though an aircraft had not been used in illegal or unsafe operations. This court held that there is a rational connection between past drug trafficking and future unsafe aircraft operations. *Rahm v. NTSB*, No. 74-1959 (D.C. Cir. Oct. 1, 1975) (memorandum opinion). The FAA agrees; therefore, this proposal is withdrawn to allow the Administrator to maintain his regulatory authority to take certificate action, when appropriate, against airmen who have been convicted of violating drug laws, whether or not that violation involved the use of an aircraft. This rule is consistent with the President's efforts to combat the illegal use and transportation of drugs.

Sections 61.15(a), 63.12(a), and 65.12(a) also currently make a person ineligible for a new certificate or rating for 1 year after final conviction. These sections make it mandatory that the Administrator deny an application for a new certificate or rating for 1 year after the date of the conviction. However, the current rule provides for but does not require the suspension or revocation of an existing certificate; rather, the Administrator may refrain from such action as appropriate. To provide this same flexibility to applicants for a new certificate or rating, the notice proposed to provide that such a conviction is "grounds for" denial rather than to provide that a conviction makes the airman ineligible for a certificate. The intent of the proposal is adopted. By stating such a conviction "is grounds for" denial, the Administrator may use discretion in determining eligibility for a certificate or rating.

There appears to be some confusion over the wording of §§ 61.15(a), 63.12(a), and 65.12(a) regarding the phrase "period of up to 1 year after the date of final conviction." It was not clear to some commenters whether the 1-year period referred to the time in which an application could be denied by the Administrator (that is, in the nature of a statute of limitations) or to the maximum duration of the sanction. The proposal was meant to provide that the denial could last for up to 1 year after the final conviction but not beyond that date. The rule, as adopted, is reorganized to clarify this intent.

As proposed in Notice 81-9, §§ 63.12(b) and 65.12(b) did not provide that the commission of an act prohibited by § 91.11(a) or § 91.12(a) is grounds for revocation or suspension of a certificate or rating issued under Part 63 or Part 65, respectively. These provisions are contained in the current rule and were not intended to be removed. Therefore, §§ 63.12(b) and 65.12(b), as adopted, incorporate these provisions.

Notice 81-9 proposed, in §§ 61.16(b) and 63.12(b), a "minimum 1-year" suspension or revocation of a certificate issued under Part 61 or Part 63, respectively, for violation of § 91.11 (c) or (d). The "minimum 1-year" is removed because it is inconsistent with the need for flexibility in enforcing the rule, as previously discussed.

Note that on October 19, 1984, the Aviation Drug-Trafficking Control Act was passed (Pub. L. 98-499). This act, in general, requires the Administrator to revoke the certificates of airmen who have committed certain Federal or state drug felonies involving aircraft. In those cases in which the new Act applies, its provisions will be used. In other cases, the current rules, as amended in this final rule, will apply.

Refusal To Carry Intoxicated Persons

Section 91.11(b) presently provides that, except in an emergency, no pilot of a civil aircraft may allow a person who is obviously under the influence of intoxicating liquors or drugs (except a medical patient under proper care) to be carried in that aircraft. Recognizing the difficulty of interpreting the word "obviously," Notice 81-9 proposed to clarify the rule by referring to a person who demonstrates by manner or physical indications that he or she is under the influence of intoxicating liquors or drugs.

Three commenters oppose the proposed changes in the wording of this regulation as it relates to alcohol. One commenter states that the proposed rule is too strict, since it indicates that a passenger who had only one or two drinks would not be permitted on board because that person would be "under the influence." This commenter suggests that the rule only prohibit boarding of passengers whom the pilot has reason to believe will be a danger, such as those who are violent or angry. Another commenter suggests that wording in § 121.575(c) of the FAR has been effective in its application to Part 121 air carriers and should be used in § 91.11(b). Section 121.575(c) states: "No certificate holder may allow any person to board any of its aircraft if that person appears to be intoxicated." The FAA

agrees that the wording "appears to be intoxicated" is appropriate and is more likely to be correctly interpreted. The FAA has therefore added this phrase to the proposed rule and amended § 91.11(b) to provide that no pilot of a civil aircraft may allow any person who appears to be intoxicated, or who demonstrates by manner or physical indication that he or she is under the influence of drugs, to be carried aboard that aircraft.

Regulatory Evaluation

It is expected that these amendments will deter a person from acting or attempting to act as a crewmember while under the influence of alcohol or drugs and will prevent some accidents that might otherwise occur. The exact number, however, is impossible to calculate.

While there might be some minor costs incurred in obtaining the results of tests and submitting them to the Administrator, the economic benefits provided by increased deterrence are greater than the relatively small costs involved.

Conclusion

While a minor cost may be incurred by suspected violators if asked to furnish the results of tests, compliance with these amendments will not impose any other cost or economic burden on airmen. Accordingly, it has been determined that this is not a major regulation under Executive Order 12291. However, this rule is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since these amendments have a minor cost impact and apply to individuals rather than small entities, I certify that under the criteria of the Regulatory Flexibility Act, these amendments will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects

14 CFR Part 61

Airmen, Aircraft pilots, Pilots, Alcohol and alcoholic beverages, Narcotics, Air safety, Safety, Aviation safety, Drug abuse.

14 CFR Part 63

Airmen, Narcotics, Air safety, Safety, Aviation safety, Drug abuse.

14 CFR Part 65

Airmen, Narcotics, Air safety, Safety, Aviation safety, Drug abuse.

14 CFR Part 91

Aviation safety, Safety, Aircraft pilots, Liquor, Narcotics, Pilots.

Adoption of the Amendment

Accordingly, Parts 61, 63, 65, and 91 of the Federal Aviation Regulations (14 CFR Parts 61, 63, 65, and 91) are amended as follows, effective June 17, 1985.

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. By revising § 61.15 to read as follows:

§ 61.15 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs or substances is grounds for—

(1) Denial of an application for any certificate or rating issued under this Part for a period of up to 1 year after the date of final conviction; or

(2) Suspension or revocation of any certificate or rating issued under this part.

(b) The commission of an act prohibited by § 91.11(a) or § 91.12(a) of this chapter is grounds for—

(1) Denial of an application for a certificate or rating issued under this part for a period of up to 1 year after the date of that act; or

(2) Suspension or revocation of any certificate or rating issued under this part.

2. By adding a new § 61.16 to read as follows:

§ 61.16 Refusal to furnish test results.

(a) No person who refuses to furnish or authorize the release of the results of a test already taken, when requested by the Administrator in accordance with § 91.11 (c) or (d) of this chapter, is eligible for any certificate or rating under this part for a period of 1 year after the date of that refusal.

(b) A refusal to furnish or authorize the release of test results, when requested by the Administrator in accordance with § 91.11 (c) or (d) of this chapter, is grounds for suspension or revocation of any certificate or rating issued under this part.

PART 63—CERTIFICATION: CREWMEMBERS OTHER THAN PILOTS

3. By revising § 63.12 to read as follows:

§ 63.12 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs or substances is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of final conviction; or

(2) Suspension or revocation of any certificate or rating issued under this Part.

(b) The commission of an act prohibited by § 91.11(a) or § 91.12(a) of this chapter is grounds for—

(1) Denial of an application for a certificate or rating issued under this part for a period of up to 1 year after the date of that act; or

(2) Suspension or revocation of any certificate or rating issued under this part.

4. By adding a new § 63.12a to read as follows:

§ 63.12a Refusal to furnish test results.

(a) No person who refuses to furnish or authorize the release of the results of a test already taken, when requested by the Administrator in accordance with § 91.11 (c) or (d) of this chapter, is eligible for any certificate or rating under this Part for a period of 1 year after the date of that refusal.

(b) A refusal to furnish or authorize the release of test results, when requested by the Administrator in accordance with § 91.11 (c) or (d) of this chapter, is grounds for suspension or revocation of any certificate or rating issued under this part.

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

5. By revising § 65.12 to read as follows:

§ 65.12 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or

depressant or stimulant drugs or substances is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of final conviction; or

(2) Suspension or revocation of any certificate or rating issued under this part.

(b) The commission of an act prohibited by § 91.12(a) of this chapter is grounds for—

(1) Denial of an application for a certificate or rating issued under this part for a period of up to 1 year after the date of that act; or

(2) Suspension or revocation of any certificate or rating issued under this part.

PART 91—GENERAL OPERATING AND FLIGHT RULES

6. By revising § 91.11 to read as follows:

§ 91.11 Alcohol or drugs.

(a) No person may act or attempt to act as a crewmember of a civil aircraft—

(1) Within 8 hours after the consumption of any alcoholic beverage;

(2) While under the influence of alcohol;

(3) While using any drug that affects the person's faculties in any way contrary to safety; or

(4) While having .04 percent by weight or more alcohol in the blood.

(b) Except in an emergency, no pilot of a civil aircraft may allow a person who appears to be intoxicated or who demonstrates by manner or physical indications that the individual is under the influence of drugs (except a medical patient under proper care) to be carried in that aircraft.

(c) Whenever the Administrator has a reasonable basis to believe that a person may have violated paragraph (a)(1), (a)(2), or (a)(4) of this section, that person shall, upon request by the Administrator, furnish the Administrator, or authorize any clinic, hospital, doctor, or other person to release to the Administrator, the results of each test taken within 4 hours after acting or attempting to act as a crewmember that indicates percentage by weight of alcohol in the blood.

(d) Whenever the Administrator has a reasonable basis to believe that a

person may have violated paragraph (a)(3) of this section, that person shall, upon request by the Administrator, furnish the Administrator, or authorize any clinic, hospital, doctor, or other person to release to the Administrator, the results of each test taken within 4 hours after acting or attempting to act as a crewmember that indicates the presence of any drugs in the body.

(e) Any test information obtained by the Administrator under paragraph (c) or (d) of this section may be evaluated in determining a person's qualifications for any airman certificate or possible violations of this chapter and may be used as evidence in any legal proceeding under section 602, 609, or 901 of the Federal Aviation Act of 1958.

(Secs. 313(a), 601, 602, and 609 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1422, and 1429), and 49 U.S.C. 106(g) (Revised, Pub. L. 97-449; January 12, 1983))

Issued in Washington, D.C., on December 13, 1984.

Donald D. Engen,
Administrator.

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