

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 61**

[Docket No. 27682; Amdt. No. 61-97]

RIN 2120-AF32

Recent Flight Experience: Pilot in Command

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule amends the Federal Aviation Regulations governing the recent flight experience requirements for pilots in command (PICs). In an earlier amendment to the recent flight experience requirements, PICs employed by a part 121 or part 135 air carrier, while performing flight operations under part 91, 121, or 135 for the certificate holder, were excepted from compliance with part 61 recency requirements. This amendment makes it clear that only PICs who meet the recent experience requirements of part 121 or part 135 are excepted from compliance with part 61 recency requirements. The FAA is adopting this amendment immediately to ensure that all PICs employed by part 121 and part 135 certificate holders remain qualified under either part 61 or under part 121 or part 135.

DATES: *Effective Date:* June 29, 1995.
Comment Date: August 28, 1995.

ADDRESSES: Comments on this amendment should be mailed, in triplicate, to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-200), Docket No. 27682, 800 Independence Ave., SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27682. Comments may also be sent electronically to the following Internet address: nprmcmts@mail.hq.faa.gov. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Project Development Branch, AFS-240, Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-8096.

SUPPLEMENTARY INFORMATION:**Comments Invited**

This amendment is only a clarification to remove an unintended

technical "loophole" and does not involve a change in the fundamental currency requirements as historically understood and complied with by pilots. This change to part 61 is being adopted without notice and prior public comment because of that and because it is necessary to preclude any interpretation that might adversely affect safety. The Regulatory Policies of the Department of Transportation (44 FR 11034; February 26, 1979), however, provide that, to the maximum extent possible, Department of Transportation (DOT) operating administrations should provide an opportunity for public comment on regulations issued without prior notice.

Accordingly, interested persons are invited to participate in the rulemaking process by submitting such written data, views, or arguments as they may desire. Comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment are also invited. Comments must include the regulatory docket or amendment number and be submitted in triplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator. Late filed comments will be considered to the extent practicable. This final rule may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this final rule must submit a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. 27682." The postcard will be date-stamped by the FAA and returned to the commenter.

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs (APA-200), 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling the Office of Public Affairs at (202) 267-3484. Communications must identify the docket number of this amendment.

Background

On November 14, 1994, the FAA issued a final rule amending § 61.57 of the Federal Aviation Regulations (59 FR 56385). The FAA amended § 61.57 to

provide relief from essentially redundant recency requirements for PICs serving in part 121 and part 135 air carrier operations. The FAA had determined that since both part 121 and part 135 operators already had to meet recency requirements that were at least equivalent to the recency requirements of § 61.57, PICs employed by these operators did not need to show compliance with § 61.57 while they were performing flights for part 121 and part 135 operators. Accordingly, as part of the above final rule, the FAA revised § 61.57 (f) to provide that PICs conducting part 91 flights (e.g., ferry flights, training flights, etc.) for the part 121 or part 135 operator, did not need to show compliance with § 61.57. The FAA made this decision because these operations were under the control of the certificate holder, and these PICs would be current under the qualification and recency requirements of part 121 or part 135.

Since the publication of the final rule, however, the FAA has become aware that some PICs employed by a part 121 or part 135 operator, conducting only part 91 flights, do not comply with the recency requirements under §§ 121.439 or 135.247. Under the wording of the new rule these pilots would technically not have to comply with the recency requirements of § 61.57. This was not the intent of the FAA. The final rule was designed to provide relief to PICs serving in part 121 and part 135 air carrier operations from unnecessary duplicate recordkeeping only when they already complied with qualification, training, and recency requirements found in parts 121 or 135. This approach would continue the current level of safety.

The FAA did not intend to enable PICs employed by part 121 and part 135 operators, in conducting part 91 flight operations for the part 121 or part 135 operator, to avoid requirements to remain qualified and current under part 61 or under parts 121 or 135. This final rule revises § 61.57(f) to provide that PICs employed by a part 121 or part 135 operator are excepted from compliance with the recency requirements of § 61.57, only if they are qualified under §§ 121.437 or 135.243 and meet the recent experience requirements under §§ 121.439 or 135.247. Otherwise, these PICs must show compliance with the recency requirements of § 61.57 in order to conduct part 91 flights.

Immediate Action

There is good cause for immediate adoption of this amendment as it merely restores the pre-existing rule so as to remove an unintended technical

“loophole” and does not involve a change in the fundamental recency requirements as understood by pilots. Accordingly, notice and public procedure under 5 U.S.C. 553(b)(B) are unnecessary. Further, immediate action is necessary to avoid any misinterpretation that potentially could result in a significant degradation of safety. Therefore, the FAA is issuing this amendment as a final rule without notice and comment, and finds good cause for making this amendment effective in less than 30 days.

Economic Evaluation

The FAA has determined that this rule is not a “significant regulatory action” under the criteria of Executive Order 12866. The FAA, therefore, is not required to prepare a Regulatory Impact Analysis under either the Executive Order or the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). In nonsignificant rulemaking actions, the DOT Regulatory Policies and Procedures require the FAA to prepare a regulatory evaluation, analyzing the economic consequences of proposed regulations and quantifying, to the extent practicable, the estimated costs and anticipated benefits and the impacts of regulations.

The amendment in this final rule is merely a clarification to correct an unintended deletion of recency requirements for part 91 operations and does not change the duties or responsibilities of the aviation community. The amendment does not affect the manner in which pilots become qualified or remain current, as it is understood by pilots. The clarification does not, in economic terms, alter the process of becoming qualified or remaining current by a PIC. Accordingly, there are neither economic costs or benefits associated with this amendment.

International Civil Aviation Organization and Joint Aviation Regulations

The FAA has determined that a review of the Convention on

International Civil Aviation Standards and Recommended Practices is not warranted because this final rule reinstates a pre-existing rule that was made partially ineffective in circumstances clearly not intended by Amendment No. 61-96.

Regulatory Flexibility Determination

The final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. Moreover, only national and regional air carriers, rather than small entities, will be affected by this final rule. Therefore, a substantial number of small entities will not experience a significant economic impact as a result of this final rule.

International Trade Impact Analysis

This final rule will have a negligible impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the U.S. The final rule primarily affects pilots employed by regional and national air carriers, not businesses involved in the sale of aviation products or services.

Federalism Impact

The regulations adopted herein will not have a substantial direct effect of 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 does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), there are no requirements for information collection associated with this rule.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact

Analysis, the FAA has determined that this final rule is not a significant regulatory action under Executive Order 12866. The FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this final rule is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule is minimal and accordingly a full economic evaluation is not warranted.

List of Subjects in 14 CFR Part 61

Airmen, Reporting and recordkeeping requirements.

The Amendment

Accordingly, the FAA amends 14 CFR part 61 of the Federal Aviation Regulations as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. Appendix 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

2. Section 61.57(f) is revised to read as follows:

§ 61.57 Recent Flight Experience: Pilot in Command

* * * * *

(f) *Exceptions.* This section does not apply to a pilot in command, employed by a part 121 or 135 air carrier, engaged in a flight operation under part 91, 121, or 135 for the air carrier, if the pilot is in compliance with §§ 121.437 and 121.439 or §§ 135.243 and 135.247 respectively.

Issued in Washington, D.C., on June 23, 1995.

David R. Hinson,

Administrator.

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