

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

[Docket No. FAA-2004-19630; Amendment No. 05-113]

RIN 2120-AI38

Second-in-Command Pilot Type Rating

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is amending its pilot certification regulations to establish a second-in-command (SIC) pilot type rating and associated qualifying procedures. This final rule is needed to conform FAA pilot type rating requirements to the International Civil Aviation Organization pilot type rating standards. The intended effect of this action is to allow U.S. flight crews to continue to operate in international airspace without the threat of being grounded for not holding the appropriate pilot type rating.

DATES: This final rule becomes effective on September 6, 2005.

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SUPPLEMENTARY INFORMATION:**Availability of Rulemaking Documents**

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- (1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>);
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Small Business Regulatory Enforcement Fairness Act

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Authority for This Rulemaking

The Department of Transportation (DOT) has the responsibility, under the laws of the United States, to develop transportation policies and programs that contribute to providing fast, safe, efficient, and convenient transportation (49 U.S.C. 101). The Federal Aviation Administration (FAA) is an agency of DOT. The Administrator of the FAA has general authority to issue rules regarding aviation safety (49 U.S.C. 106(g) and 44701). When an individual is found to be qualified for, and physically able to perform, certain duties, including those associated with flying and navigating an aircraft, the FAA issues an airman certificate. The airman certificate must specify the capacity in which the holder of the certificate may serve with respect to an aircraft (49 U.S.C. 44703). It is relevant to this rulemaking to also point out that, in carrying out their duties, the Secretary of Transportation and the Administrator of the FAA must act consistently with obligations of the United States Government under an international agreement (49 U.S.C. 40105).

This final rule establishes an SIC pilot type rating and associated qualifying procedures. This enables qualified individuals to have the FAA specify on their airman certificate that they can act as second in command with respect to certain aircraft. Before this action, individuals who were qualified to act as second in command did not have a way of indicating their achievement on their airman certificate. Under the Convention on International Civil Aviation, as discussed below, the FAA pilot type rating requirements need to conform to the International Civil Aviation Organization pilot type rating standards to be recognized by other countries. For these reasons, this rule is a reasonable and necessary exercise of the FAA's rulemaking authority and obligations.

Background

The Convention on International Civil Aviation (61 Stat. 1180), which was signed at Chicago, Illinois, on December

7, 1944 (the Convention), is an international treaty that establishes certain principles and arrangements to ensure that international civil aviation develops in a safe and orderly manner and operates soundly and economically. The Member States who signed the Convention, including the United States, agreed to keep their regulations governing civil aviation, to the greatest possible extent, consistent with those established under the Convention (Article 12). The International Civil Aviation Organization (ICAO) is the entity established by the Convention to set international regulatory standards. Concerning pilots and flight crew members, the Member States agreed to mutually recognize each others' certificates of competency and licenses if the requirements for the certificates or licenses are equal to or above the minimum standards established under the Convention (Article 33). If a Member State finds it impracticable to comply with an ICAO standard or bring its regulations into full accord with an ICAO standard, or adopts regulations different from an ICAO standard, it must notify ICAO of the difference (Article 38).

The United States had filed a difference with ICAO concerning our SIC qualification requirements under 14 CFR 61.55 versus ICAO's type ratings standards for the SIC pilot flight crewmember position (See ICAO Annex 1, paragraphs 2.1.3.2 and 2.1.4.1.A). The difference between the FAA's requirements and the ICAO standards was that the FAA did not issue a pilot type rating for the SIC pilot flight crewmember position. Although the U.S. SIC qualifications require initial and annual recurrent knowledge and flight training and ICAO does not, as a result of not issuing SIC pilot type ratings, some foreign civil aviation authorities (European and Caribbean) had notified the FAA and U.S. flight crews that they intended to enforce the ICAO type rating standards for SIC pilot crewmembers when U.S. flight crews operate in their airspace. This could have resulted in U.S. flight crews being grounded. To resolve this situation, the FAA issued a notice of proposed rulemaking (NPRM) on November 16, 2004 (69 FR 67258) and proposed to establish SIC type ratings on U.S. airmen certificates.

We received 49 comments in response to the NPRM. About half the commenters supported the proposal. About one quarter of commenters opposed it. Another one quarter of commenters had specific questions about the proposed procedures for issuing the SIC pilot type rating.

Twenty-four of the comments came from individual concerned citizens. Twenty-five of the comments came from organizations, including Ameristar Air Cargo, Inc.; Dow Chemical Company; American Airlines; SimuFlite; Aircraft Owners and Pilots Association; Air Transport Association of America; Delta Airlines; National Business Aviation Association, Inc.; the Airline Pilots Association; the General Aviation Manufacturers Association; and the National Air Carrier Association.

Discussion of the Final Rule

The FAA is amending its regulations to provide for the issuance of a pilot type rating for SIC privileges when a person completes the SIC pilot familiarization training set forth under 14 CFR 61.55(b). This final rulemaking action conforms U.S. SIC qualification requirements under 14 CFR 61.55 with the ICAO standards under Annex 1, paragraphs 2.1.3.2 and 2.1.4.1.A and eliminates the U.S. difference on file with ICAO.

The final rule does not require the SIC pilot type rating for domestic flight operations within United States airspace. For the purposes of this final rule, "domestic flight operations within United States airspace" means flight:

- Between any points within the 48 contiguous States of the United States or the District of Columbia;
- Operations solely within the 48 contiguous States of the United States or the District of Columbia;
- Operations entirely within any State, territory, or possession of the United States; and
- Flights within the Hawaiian Islands.

(Readers should note however, that pilots must comply with the SIC qualifications and training requirements of 14 CFR 61.55, if applicable.)

The final rule requires pilots who plan to fly outside U.S. airspace and land in foreign countries to obtain the SIC pilot type rating. We also recommend having the SIC pilot type rating when flying over or into airspace controlled by a foreign civil aviation authority that requires it. This would include not only flights to foreign destinations, but also flights where there is the potential to land in a foreign country (for example, a flight from Newark, NJ to Anchorage, AK that crosses Canadian airspace could result in an emergency landing in Canada).

The final rule establishes two procedures for obtaining the SIC pilot type rating. Under final § 61.55(d), an individual who satisfactorily completes the SIC familiarization training requirements of 14 CFR 61.55(b) may

apply for and receive a pilot type rating for SIC privileges in a particular aircraft type. The SIC familiarization training requirements are not new and have not been changed under this final rule. Under final § 61.55(e), an individual who satisfactorily completes an approved SIC training program or proficiency check under parts 121, 125, or 135 may apply for and receive a pilot type rating for SIC privileges in a particular aircraft type. In both cases, the aircraft must be certificated for operations with a minimum crew of at least two pilots. These two procedures are described in more detail below.

Completion of SIC Familiarization Training

A pilot seeking an SIC pilot type rating based on the SIC familiarization training under § 61.55(b) must follow the application process described under final § 61.55(d). The applicant must complete the training in the aircraft in which the pilot is applying for SIC pilot type rating privileges, and the aircraft must be certificated for operations with a minimum crew of at least two pilots. In response to several comments requesting clarification of the application and certification process that was described in the preamble of the NPRM, the FAA has further defined the application and certification process and added it to final § 61.55(d).

Final § 61.55(d)(1)—The SIC pilot type rating applicant must receive the familiarization training under § 61.55(b) from a qualified pilot in command [See § 61.31(a)] or an authorized flight instructor who holds the aircraft type rating on his/her pilot certificate [See § 61.31(a) and § 61.195(b)]. The ground training under § 61.55(b)(1) may be given by an authorized advanced ground instructor [See § 61.215(b)], authorized flight instructor, or qualified pilot in command. The person who provided the training (the trainer) must sign the applicant's logbook or training record after each lesson in accordance with § 61.51(h)(2). For instance, the logbook or training record must specify the type and amount of training given.

In lieu of the trainer, a qualified management official within the trainer's organization can sign the applicant's flight experience and/or training records or logbook and make the required endorsement. The qualified management official, however, must hold the position of Chief Pilot, Director of Training, Director of Operations, or another comparable management position within the organization, and the management official must be in a position to verify the applicant's

training records and that the training was given.

Final § 61.55(d)(2)—The trainer or qualified management official must make an endorsement in the applicant's logbook that states "[Applicant's Name and Pilot Certificate Number] has demonstrated the skill and knowledge required for the safe operation of the [Type of Aircraft], relevant to the duties and responsibilities of a second-in-command."

Final § 61.55(d)(3)—In the case of training records that are electronically maintained, the applicant must present written copies of those records containing the signature of the trainer to the FAA FSDO or Examiner. In lieu of the trainer, a qualified management official within the trainer's organization can verify the training and can provide the instructor's signature and make the required endorsement.

Final § 61.55(d)(4)—The applicant must complete and sign an Airman Certificate and/or Rating Application, FAA Form 8710-1, and present the application to a FAA Flight Standards District Office (FSDO) or to an Examiner. The Examiner must have the authority to conduct practical tests for pilot certification. However, because this process is purely an administrative action and no practical test is required, the Examiner need not hold authorization in the type of aircraft in which the pilot is applying for SIC pilot type rating privileges.

Final § 61.55(d)(5)—The trainer of the ground and flight training must sign the "Instructor's Recommendation" section of the Airman Certificate and/or Rating Application, FAA Form 8710-1. In lieu of the trainer, a qualified management official within the trainer's organization may sign the applicant's FAA Form 8710-1.

Final § 61.55(d)(6)—The applicant must appear in person at a FAA FSDO or to an Examiner with his or her logbook/training records and with the completed and signed FAA Form 8710-1.

The FAA FSDO or Examiner must review the SIC pilot type rating applicant's logbook/training record to ensure completion of the required SIC training and endorsements. An Aviation Safety Inspector, Aviation Safety Technician, or Examiner must inform the applicant that the *SIC Privileges Only* limitation may only be removed if the applicant completes the appropriate training and pilot type rating practical test for pilot-in-command (PIC) qualification [See § 61.63(d) or § 61.157(b), as appropriate].

The FAA FSDO or Examiner completes the application and issues the

applicant a temporary pilot certificate for a SIC pilot type rating with the appropriate aircraft type rating with the limitation "SIC Privileges Only." For example, an applicant who has accomplished the § 61.55(b) SIC familiarization training in a Cessna 500 would receive a temporary pilot certificate that reads as follows:

COMMERCIAL PILOT CERTIFICATE
Airplane Single Engine Land
Airplane Multiengine Land
Instrument Airplane
CE500 SIC Privileges Only

The FAA FSDO forwards the application and newly issued temporary pilot certificate to the FAA Airman Certification Branch, AFS-760. If the application is made through an Examiner, the Examiner forwards the FAA Form 8710-1 application and newly issued temporary pilot certificate to the Examiner's jurisdictional FAA FSDO who sends the application and file to the FAA Airman Certification Branch, AFS-760.

The FAA Airman Certification Branch processes the SIC pilot type rating application and temporary pilot certificate and issues the applicant a permanent pilot certificate.

Final § 61.55(d)(7)—There is no practical test required for the issuance of the "SIC Privileges Only" pilot type rating.

Part 121, 125, or 135 SIC Training or Proficiency Check

A person who completes an FAA-approved SIC training curriculum under 14 CFR part 121 or 135 or a proficiency check under 14 CFR part 125 in the aircraft for which SIC pilot type rating privileges are sought is entitled to receive that pilot type rating for SIC privileges. The applicant must complete the training in the aircraft in which the pilot is applying for SIC pilot type rating privileges, and the aircraft must be certificated for operations with a minimum crew of at least two pilots. In response to several comments requesting clarification of the application and certification process that was described in the preamble of the NPRM, the FAA has further defined the application and certification process and added it to final § 61.55(e).

Final § 61.55(e)(1)—The trainer must sign the applicant's logbook or training record after each lesson in accordance with § 61.51(h)(2). For instance, the logbook or training record must specify the type and amount of training given. In lieu of the trainer, a qualified management official within the trainer's organization can sign the applicant's training records or logbook and make

the required endorsement. The qualified management official, however, must hold the position of Chief Pilot, Director of Training, Director of Operations, or another comparable management position within the organization, and the management official must be in a position to verify the applicant's training records and that the training was given.

Final § 61.55(e)(2)—The trainer or qualified management official must make an endorsement in the applicant's logbook that states "[Applicant's Name and Pilot Certificate Number] has demonstrated the skill and knowledge required for the safe operation of the [Type of Aircraft], relevant to the duties and responsibilities of a second-in-command."

Final § 61.55(e)(3)—In the case of flight experience and/or training records that are electronically maintained, the applicant must present copies of those records containing the signature of the trainer to the FAA FSDO or Examiner (may also be known in air carrier training programs as an Aircrew Program Designee or "APD"). In lieu of the trainer, a qualified management official within the trainer's organization can verify the training and can provide the instructor's signature and make the required endorsement.

Final § 61.55(e)(4)—The applicant must complete and sign an Airman Certificate and/or Rating Application, FAA Form 8710-1, and present the application to an FAA FSDO or to an Examiner or an authorized Aircrew Program Designee. The Examiner/Aircrew Program Designee must have authority to conduct practical tests for pilot certification. However, because this process is purely an administrative action and no practical test is required, the Examiner/Aircrew Program Designee need not hold authorization in the type of aircraft in which the pilot is applying for SIC pilot type rating privileges.

Final § 61.55(e)(5)—The trainer of the ground and flight training must sign the "Instructor's Recommendation" section of the Airman Certificate and/or Rating Application, FAA Form 8710-1. In lieu of the trainer, a qualified management official within the trainer's organization may sign the applicant's FAA Form 8710-1.

Final § 61.55(e)(6)—The applicant must appear in person at a FAA FSDO or to an Examiner or to an authorized Aircrew Program Designee with his or her logbook/training records and with the completed and signed FAA Form 8710-1.

The FAA FSDO or Examiner or authorized Aircrew Program Designee

reviews the SIC pilot type rating applicant's logbook and/or training record for ensuring completion of the required training and endorsements. An Aviation Safety Inspector, Aviation Safety Technician, Examiner, or authorized Aircrew Program Designee must inform the applicant that the SIC Privileges Only limitation may only be removed if that applicant completes the appropriate type rating practical test for PIC qualification.

Final § 61.55(e)(7)—There is no practical test required for the issuance of the "SIC Privileges Only" type rating.

The FAA FSDO or Examiner or authorized Aircrew Program Designee completes the application and issues the applicant a temporary pilot certificate for an SIC pilot type rating with the appropriate aircraft type rating with the limitation "SIC Privileges Only." For example, an applicant who accomplishes SIC training in a Boeing 737 will receive a temporary pilot certificate that reads as follows:

COMMERCIAL PILOT CERTIFICATE
Airplane Single Engine Land
Airplane Multiengine Land
Instrument Airplane
B-737 SIC Privileges Only

The FAA FSDO forwards the application and newly issued temporary pilot certificate to the FAA Airman Certification Branch, AFS-760. If the application is made through an Examiner or authorized Aircrew Program Designee, the Examiner/authorized Aircrew Program Designee forwards the application and newly issued temporary pilot certificate to their jurisdictional FAA FSDO who sends the application and file to the FAA Airman Certification Branch, AFS-760.

The FAA Airman Certification Branch processes the SIC pilot type rating applicant's application and temporary pilot certificate and issues the applicant a permanent pilot certificate.

The FAA anticipates that many pilots have already completed SIC training, whether it was through § 61.55(b) SIC familiarization training or through an FAA-approved SIC training curriculum under 14 CFR parts 121 or 135 or a proficiency check under 14 CFR part 125. Therefore, many pilots will be making application for an SIC pilot type rating based on past completion of SIC pilot training or a proficiency check. The procedures for making such an application will follow the same processes described earlier. The only difference is that applicants who completed their SIC training prior to the FAA issuing this rule will be required to show compliance with either the

initial or recurrent SIC training within the 12 calendar months before the month of application for an SIC pilot type rating.

The following examples illustrate how the rule applies to pilots who already completed their SIC training:

Example No. 1: The date is June 30, 2005, and the final rule for issuing SIC pilot type ratings became effective on January 30, 2005. An applicant completed initial § 61.55(b) SIC pilot familiarization training in a Cessna 500 on August 6, 1998. The applicant last completed recurrent § 61.55(b) SIC pilot familiarization training in a Cessna 500 on August 6, 2000. This applicant is not eligible to apply for a SIC pilot type rating for the Cessna 500 because the applicant did not complete recurrent SIC familiarization training within the 12 calendar months before the month of application. Specifically, if applying on June 30, 2005, the training had to occur in the period of May 1, 2004 through June 30, 2005.

Example No. 2: The date is June 30, 2005, and the final rule for issuing SIC pilot type ratings became effective on January 30, 2005. An applicant completed initial part 121 SIC pilot training in a Boeing 737 on August 6, 1998. The applicant completed part 121 SIC pilot recurrent requirements in a Boeing 737 every 12 calendar months, including as recently as December 13, 2004. This applicant may apply for a SIC pilot type rating for the B737 because the recurrent training was completed within the 12 calendar months before the month of application (that is, it was completed in December 2004 and the month and year of application is June 2005).

Example No. 3: The date is June 5, 2005, and the final rule for issuing SIC pilot type ratings became effective on January 30, 2005. An applicant completed a part 125 SIC proficiency check in a Gulfstream IV on June 23, 2004. This applicant may apply for an SIC pilot type rating for the Gulfstream IV because the part 125 SIC proficiency check was completed within the 12 calendar months before the month of application (*i.e.*, SIC training was last completed in June 2004 and the month and year of application is June 2005 in this example).

Example No. 4: The date is December 5, 2005, and the final rule for issuing SIC pilot type ratings became effective on January 30, 2005. An applicant completed initial § 61.55(b) SIC familiarization in a Lear 60 on August 6, 1990. The applicant next shows completion of § 61.55(b) SIC familiarization training in a Lear 60 on January 23, 2005. This applicant may apply for an SIC pilot type rating for the Lear 60 because the recurrent SIC familiarization training was completed within the 12 calendar months before the month of application (that is, SIC training was last completed in January 2005 and the month and year of application is December 2005).

Discussion of Comments

Supporting Comments

Commenters cited several reasons for their support of the proposal, including—

- The proposal does not require training in addition to that already required.
- The proposed procedures are not unnecessarily burdensome or costly to the pilot community.
- Pilots who fly only within U.S. airspace do not need an SIC pilot type rating.

BellSouth Corporate Aviation and Travel Services voiced full support of requiring type certification for aircraft requiring two pilots. The commenter stated that the ever-increasing complexity and demands found in today's high performance cockpits do not safely present a learning environment. The second in command must be a fully trained professional acting as an integral part of team in place to monitor systems, look for traffic, figure takeoff and landing data, and navigate a National Airspace System that is much more complex than in years past. The crew must do all of this, plus more and still safely fly the aircraft. Aviation is a profession where certification is a minimum, and on-the-job training in the cockpit is unsafe and unacceptable.

In general, the FAA agrees with the comment. However, we believe the operating experience acquired under the supervision of an air carrier's check airman is an extremely valuable element in the qualification process. We did not consider reducing this requirement.

Dow Chemical Company voiced support for NPRM with the understanding that the proposed rulemaking would allow a part 91 second-in-command to present proof of SIC training to the FAA FSDO and receive the appropriate SIC pilot type rating.

Essentially, Dow Chemical Company's statement is correct. However, as a point of clarification, the applicant must comply with the requirements in final § 61.55(d), which address the training, instructor endorsement, and application process, to be eligible to apply for an SIC pilot type rating.

Applicability of the Rule

Both the Aircraft Owners and Pilots Association and the National Business Aviation Association, Inc. expressed support for the NPRM, but wanted clarification on the wording of proposed § 61.55(a)(3) because what the FAA stated in the proposed rule did not parallel what the FAA provided as explanation in the preamble. The NPRM preamble said as long as a person operates within the airspace of the United States, the person would not have to hold the proposed SIC pilot type rating. On the other hand, proposed

61.55(a)(3) seems to require it of everyone.

The FAA agrees with the commenters and revised final § 61.55(a)(3) to require the SIC pilot type rating only "if the flight is outside the airspace of the United States and its jurisdictional territories."

One commenter requested clarification whether part 91 SIC pilots (corporate or private carriage, or fractional ownership) are covered by the new rules.

The final rule applies to part 91 SIC pilots involved in private carriage and fractional ownership.

International Agreements

Several individual commenters opposed the proposal because they do not believe ICAO should be allowed to impose its standards on U.S. aviation rules and its citizens. The FAA understands the concerns of citizens who do not want the FAA to impose burdensome rules that unnecessarily restrict them and the aviation industry just to conform our rules to international standards. However, the FAA believes that the commenters may not understand the legal requirements that the Chicago Convention imposes on all Member States in relation to ICAO standards. The Member States who signed the Convention, including the United States, agreed to keep their regulations governing civil aviation, to the greatest possible extent, consistent with those established under the Convention. The International Civil Aviation Organization is the entity established by the Convention to set international regulatory standards. The FAA has a legal duty to act consistently with obligations of the United States Government under an international agreement (49 U.S.C. 40105). The purpose of this final rule is to enable our flight crews to conform to ICAO Annex 1, paragraphs 2.1.5.2 and paragraphs 2.1.3.2 and 2.1.4.1.A and the rules of foreign civil aviation authorities when operating outside of United States airspace. Most commenters recognize that the rule provides a simple process for issuing the SIC pilot type rating and conforms to our existing SIC training and certification requirements without undue burden on our pilots and the aviation industry.

Need for a Practical Test

SimuFlite commented that issuance of the SIC privileges type rating requires a person to submit to a practical test instead of just completing training. International Business Aviation Council identified two issues with the proposed amendment to 14 CFR 61.55 that may

not meet the requirements of Annex 1. First, while the proposal addresses most of the requirements for "experience" as stated in ICAO Annex 1, paragraph 2.1.5.2.a) in that these are covered in general terms by § 61.55(b)(1) and (2), it does not adequately address the skill requirement that is specified in ICAO Annex 1, paragraph 2.1.5.2.b) as to "demonstrate the skill and knowledge required for the safe operation of the applicable aircraft relevant to the duties of a co-pilot." The NPRM indicates that the person who provides the familiarization training must sign the applicant's logbook or training record and the "Instructors Recommendation" area of FAA Form 8710-1 application. This would appear to fully satisfy the experience requirement, but not the skill requirement. This could be rectified by requiring the person who provides the familiarization training to attest that the applicant has "demonstrated the skill and knowledge required for the safe operation of the applicable type of aircraft, relevant to the duties of a co-pilot," rather than merely indicating that they have undergone familiarization training. The second issue relates to the knowledge requirement specified in ICAO Annex 1, paragraph 2.1.5.2.c. The NPRM does not require a person holding a private or commercial pilot certificate to demonstrate knowledge at the airline transport pilot level. Some States have addressed this requirement through an Aircraft Type Rating exam that applicants who have not passed the Airline Transport Pilot knowledge exams must pass prior to issue of their first aircraft type rating.

The FAA has determined that the proposed changes to § 61.5(b)(7)(iv) and § 61.55 fully conform to the standards set forth in ICAO Annex 1, paragraphs 2.1.3.2 and 2.1.4.1.A. The ICAO standards under Annex 1, paragraphs 2.1.5.2 state that an applicant must have "gained under appropriate supervision, experience in the applicable type of aircraft and/or flight simulator in the following * * *." However, the FAA agrees with the commenter's recommendation about an endorsement. The FAA therefore revised final § 61.55(d)(2) and (e)(2) by including the endorsement "[Applicant's Name and Pilot Certificate Number] has demonstrated the skill and knowledge required for the safe operation of the [Type of Aircraft], relevant to the duties and responsibilities of a second-in-command."

Ball Corporation commented that an SIC pilot type rating seems to water down a full type rating only to meet a regulatory technicality. The commenter

stated that the rule does nothing to enhance safety, which is why any regulation should be written. The commenter believes that a fully type rated pilot has demonstrated his/her knowledge of and ability to operate the aircraft safely. It believes that requiring two type-rated pilots is more important on a long international flight with disrupted biorhythms and extended duty days.

The FAA does not disagree with the commenter's remarks concerning the importance of two type-rated pilots. However, the FAA believes that its current system of training and qualifying SIC pilots under existing § 61.55 meets or exceeds the current ICAO requirements. As was stated in the NPRM, the FAA's current system of training and qualifying SIC pilots require annual recurrent requirements; whereas, the current ICAO requirements only require the type rating and no recurrent training and qualification requirements.

Ameristar Air Cargo, Inc. commented that if the FAA intends to allow an endorsement (meaning a pilot type rating) on a license based on an instructor's recommendation, then it should consider having an FAA representative observe the performance of the candidate in the aircraft or FAA-approved simulator before issuing the endorsement.

In response to Ameristar's recommendation, the FAA believes that requiring all SIC pilot type rating training be monitored would be impossible to achieve due to staffing limits and, more importantly, is unnecessary. For years, existing § 61.55 has provided a safe and efficient way to qualify pilots to serve as SICs who complete the familiarization training without the training being monitored by the FAA. This new SIC pilot type rating final rule provides a process for issuing SIC pilot type ratings, but the § 61.55 SIC familiarization training requirements remain the same. Furthermore, § 61.55 requires both initial and annual recurrent familiarization training for a pilot to remain qualified to serve as an SIC. In contrast, the ICAO type rating requirements (See ICAO Annex 1, paragraphs 2.1.3.2 and 2.1.4.1.A) do not require recurrent training.

Financial Impact of the Rule

A representative of American Airlines stated there are 3,066 pilots currently flying for American Airlines as SICs that do not hold a type rating. The commenter stated that it agrees with the idea of issuing SIC pilot type ratings; however, the initial implementation of

this rule would be costly and overly cumbersome. The commenter presented cost figures claiming the rule would impose additional costs of more than \$1.4 million over the next 10 years, \$528,251 in year one. A majority of the first year costs are associated with Examiners having to complete airmen applications, and managers tracking the 3,066 SIC applications between instructors, applicants, examiners, and the American Airlines Certificate Management Office. The commenter stated that the majority of the costs would be associated with issuing temporary certificates and collecting current permanent certificates. The commenter estimates the recurring costs to be over \$90,000 in the second year, escalating to over \$114,000 in the tenth year.

The FAA has accepted and adopted this comment in part. Because the commenter did not provide supporting information underlying his estimate of the total costs of the rule, we substituted our cost variables in deriving an estimate of total compliance costs. The cost of this rule has five components: (1) Cost for SIC candidates to fill out Form 8710-1, (2) Cost for managers to review each application, (3) Cost for FSDO employee or examiner to complete Form 8710-1, (4) Cost to process Form 8710-1 at FSDO and issue temporary certificate, and (5) Cost to process Form 8710-1 at FAA Airmen Certification Branch.

The FAA estimates the cost of this final rule to be \$1.7 million (\$1.5 million, present value) over the next ten years. Please see the regulatory evaluation for a detailed description of how we calculated these costs.

Procedures for Air Carriers

Ameristar Air Cargo, Inc. commented that the FAA should address giving specific authority to air carriers to allow the processing of the Airman Certificate and/or Rating Application, FAA Form 8710-1, utilizing Aircrew Program Designees (APD).

Final § 61.55(e) provides for completion of an SIC training curriculum under part 121 to qualify for the SIC pilot type rating. Aircrew Program Designees hold examining authority and therefore would be permitted to process an applicant's Airman Certificate and/or Rating Application. If the operator does not have an APD, the applicant must present his/her Airman Certificate and/or Rating Application, FAA Form 8710-1 to an FAA Flight Standards District Office or to an Examiner for processing.

The National Air Carrier Association, Air Transport Association, and the

representative of American Airlines commented that where an air carrier employs numerous pilots who have previously qualified by completion of an air carrier training program within the past 12 months, the FAA should allow the air carrier to send the applications for all its qualified SIC candidates to the FAA Airman Certification Branch at one time.

It is not possible to issue ratings to multiple individuals at one time without the applicant being positively identified by the FAA or by an examiner. The FAA is required to verify identity of the applicants in the application and certification process. The U.S. Congress mandated modification of the airman certification system in the Federal Aviation Administration Drug Enforcement Assistance Act of 1988 (DEA Act) (Subtitle E of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690)) to ensure positive and verifiable identification of each person applying for or holding a pilot certificate. Most air carriers have qualified APD on staff and can issue the SIC pilot type rating for pilot employees of their air carrier.

The National Air Carrier Association recommends that the FAA provide a minimum of six months from issuing the final rule to full implementation and revision of its ICAO difference. The reason for this comment is because member airlines need to provide time for the initial processing of the several hundred thousand applications required for this SIC pilot type rating. The representative of American Airlines requested 18 months to complete the initial certification process for its initial 3,066 pilots that are not currently type rated.

The FAA does not agree it is necessary to delay implementation of this final rule. The FAA has been put on notice from several foreign civil aviation authorities that they intend to begin enforcing the type-rating requirement. The sooner this final rule becomes effective and U.S. pilots receive their SIC pilot type ratings, the sooner U.S. flight crews will be able to operate internationally unimpeded. Therefore, it is imperative that the final rule become effective as soon as possible.

To streamline this initial process, the National Air Carrier Association recommends that the FAA abandon the requirement for issuing a temporary pilot certificate with the "SIC Privileges Only" annotation for pilots already qualified for SIC in part 121 operations. The reason for this comment is because current part 121 SICs need to be able to continue to fly internationally until their permanent pilot certificate is

issued. Meanwhile, the FAA will need to delay removing its difference from the type rating standards of ICAO Annex 1, paragraphs 2.1.3.2 and 2.1.4.1.A until a majority of the pilots receive their permanent pilot certificates.

The FAA is not aware of any restrictions on a temporary pilot certificate versus the permanent plastic U.S. pilot certificate. A pilot who possesses a temporary pilot certificate has the same operating privileges as a pilot who holds a permanent plastic U.S. pilot certificate. Holding a temporary pilot certificate does not limit a pilot's ability to operate internationally.

The National Air Carrier Association requested clarification of a portion of the NPRM preamble that states the aviation safety inspector will "inform the applicant that the SIC Privileges Only limitation may only be removed if that applicant completes the appropriate type rating practical test for pilot-in-command qualification." Can a SIC pilot type rating be suspended, revoked or failed during a line check, simulator check, or recurrent check?

As with any certificate or rating issued by the FAA, 49 U.S.C. 44709 provides that a certificate or rating issued by the Administrator may be suspended or revoked through re-examination, if the applicant does not maintain certain standards. So the answer is "yes," if a person fails a Part 121 line check, simulator check, or recurrent check for SIC qualification, the FAA has the authority to suspend or revoke a person's pilot certificate and/or rating. However, the FAA does not invoke § 44709 after every failure of a part 121 line check, simulator check, or recurrent check. Failures on a part 121 line check, simulator check, or recurrent check are dealt with on a case-by-case basis depending on the circumstances. Normally, the applicant receives additional training and is scheduled to re-take the unsatisfactory event. This final rule does not change the current re-examination process, nor does it impose any new reexamination requirements.

The National Air Carrier Association also asked us to clarify that, where the SIC is gaining the type rating through an FAA-approved part 121 training program, there are no required modifications to the current training program required as a result of this rule.

This SIC pilot type rating final rule will not require any change to existing approved part 121 training programs.

The Air Transport Association of America acknowledged the need for harmonizing U.S. pilot certification

requirements with the other ICAO member states, but proposed to reduce the administrative requirements by allowing part 121, 125 and 135 operators that maintain training records in accordance with an FAA-approved recordkeeping program be permitted to give previously trained applicants a letter signed by a designated training manager stating that the required training was successfully completed in lieu of requiring that the actual person who provided the training sign the record or logbook. Alternately, the Air Transport Association proposed that a designated manager of the part 121, 125 or 135 operator sign the completed FAA Form 8710-1 for previously trained applicants.

The FAA resolved this issue by allowing a qualified management official within the company to sign the applicant's logbook or training record in lieu of the actual flight instructor who provided the training. See final § 61.55(d)(2) and (e)(2). Alternately, most air carriers have qualified APD on staff and can issue the SIC pilot type rating for pilot employees of their air carrier.

Kaiser Air, Inc. fully supported the proposal—it believes that U.S. flight crews are by far better trained than their international counterparts and there needs to be a way to address the international requirement for type rated SICs in the aircraft. The only thing it recommends changing is where SICs are trained on multiple aircraft, a single FAA Form 8710-1 application (with appropriate training documents) submission suffice so that an applicant does not have to wait for each type rating to be processed. It states that the final rule is otherwise an extremely well thought-out proposal that provides maximum benefit to the operators with very little overhead burden.

The FAA's standard process for issuing pilot type rating requires that an applicant complete an Airman Certificate and/or Rating Application, FAA Form 8710-1, for each rating being applied for. Therefore, the FAA cannot concur with the recommendation of issuing of multiple aircraft ratings from the applicant submitting just one FAA Form 8710-1 application.

One commenter asked what if the person who gave the training no longer works for the carrier or for some other reason (*i.e.*, deceased) cannot be found to sign the instructor recommendation block on the FAA Form 8710-1 application.

The FAA acknowledges that the air carrier may no longer employ the person who provided the training. We, therefore, modified the final rule

language [See § 61.55(d)(1) and (e)(1)] to allow an authorized management official of the organization that conducted the training to sign the training records, make the required endorsement, and sign the FAA Form 8710–1 application.

Multiple Levels of Training

Ameristar Air Cargo, Inc. commented that the proposal appears to allow multiple levels of training for a pilot to be eligible for the new SIC pilot type rating privilege. The levels would range from a simple sign off to completion of a part 121, part 135, or part 142 approved training program.

The FAA agrees that the proposal does allow multiple levels of training for the SIC pilot type rating privileges. There is a difference between SIC familiarization training under § 61.55 versus the SIC training under part 121 and part 135. There always has been a difference in the process between the SIC familiarization training under § 61.55 versus the SIC training under part 121 and part 135. However, a SIC who completes SIC familiarization training under § 61.55 would not be able to serve as a SIC in a part 121 or part 135 operation without completing that air carrier's approved SIC training curriculum. It is not the FAA's intention to parallel the SIC familiarization training of § 61.55 with the part 121 or part 135 SIC approved training programs.

Completion of a Part 142 Approved SIC Training Program

One commenter suggested the final rule provide that completion of a SIC training program under part 142 qualifies a person to receive an SIC pilot type rating.

Final § 61.55(d) provides that a person who complies with the SIC familiarization training is entitled to receive an aircraft type rating whether the training occurred under part 61, part 141 or part 142. Additionally, § 61.55(d) provides that a person who complies with the SIC familiarization training is entitled to receive an aircraft type rating whether the training was received from a qualified PIC, authorized flight instructor, or an approved air carrier training program.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the amended information collection requirements in this final rule to the Office of Management and Budget for its review. OMB approved the collection of

this information and assigned OMB Control Number 2120–0693.

This final rule establishes an application process using the existing Airman Certificate and/or Rating Application, FAA Form 8710–1, for pilots who need to obtain an SIC rating. We received one comment on the cost of the rule, which we addressed earlier in this preamble. An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this rule: (1) Has benefits that justify its costs, is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, and is not “significant” as

defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will not affect international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

Costs and Benefits of the Rule

The total costs of this final rule over the 10-year analysis period are estimated to be \$1.7 million (\$1.6 million, present value). The benefits of this rulemaking are some potential cost savings. We believe that the qualitative benefits of this rule justify its costs, since this rule will allow U.S. flag carriers to operate internationally without the threat of being grounded in a foreign country.

Who Will Be Potentially Affected by the Rule

This final rule will affect domestic air carriers who operate internationally.

Assumptions

- Analysis covers years 2006–2015.
- All monetary values are expressed in 2004 dollars.
- Discount rate—7%.
- 50% of new transport pilots will be SICs beginning in 2007.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.” To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA

provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule will not have a significant affect on small entities, given the low costs. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this final rule will not have a significant impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the statute, the FAA has assessed the potential effect of this final rule and has determined that it will allow domestic operators to operate internationally and should not affect on any trade-sensitive activity.

Unfunded Mandates Reform Act Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$120.7 million in lieu of \$100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA analyzed this final rulemaking action under the principles and criteria of Executive Order 13132, "Federalism," dated August 4, 1999 (64 FR 43255). We determined that this final rulemaking action will not have a substantial direct effect 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, and therefore will not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined that this final rulemaking action qualifies for the categorical exclusion identified in paragraph 307(k) and involves no extraordinary circumstances. This final rulemaking action allows for the issuance of pilot type ratings to SIC pilot crewmembers in order to conform the FAA pilot type rating requirements to the ICAO pilot type ratings standards.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rulemaking action under Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 61

Aircraft, Airmen, Aviation safety, and Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14 Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

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

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 2. Amend § 61.5 by adding new paragraph (b)(7)(iv) to read as follows:

§ 61.5 Certificates and ratings issued under this part.

* * * * *

(b) * * *

(7) * * *

(iv) Second-in-command pilot type rating for aircraft that is certificated for operations with a minimum crew of at least two pilots.

* * * * *

■ 3. Amend § 61.55 by revising the introductory language of paragraph (a), revising paragraph (a)(2), adding new paragraph (a)(3), redesignating existing paragraphs (d) through (h) as paragraphs (f) through (j), and adding new paragraphs (d) and (e) to read as follows:

§ 61.55 Second-in-command qualifications.

(a) Except as provided in paragraph (f) of this section, a person may serve as a second-in-command of an aircraft type certificated for more than one required pilot flight crewmember or in operations requiring a second-in-command only if that person holds:

* * * * *

(2) An instrument rating that applies to the aircraft being flown if the flight is under IFR; and

(3) The appropriate pilot type rating for the aircraft unless the flight will be conducted as domestic flight operations within United States airspace.

* * * * *

(d) A person may receive a second-in-command pilot type rating for an aircraft after satisfactorily completing the second-in-command familiarization training requirements under paragraph (b) of this section in that type of aircraft. The person must comply with the following application and pilot certification procedures:

(1) The person who provided the training must sign the applicant's logbook or training record after each lesson in accordance with § 61.51(h)(2) of this part. In lieu of the trainer, it is permissible for a qualified management official within the organization to sign the applicant's training records or logbook and make the required endorsement. The qualified management official must hold the position of Chief Pilot, Director of Training, Director of Operations, or another comparable management position within the organization that provided the training and must be in a position to verify the applicant's training records and that the training was given.

(2) The trainer or qualified management official must make an endorsement in the applicant's logbook that states "[Applicant's Name and Pilot Certificate Number] has demonstrated the skill and knowledge required for the safe operation of the [Type of Aircraft], relevant to the duties and

responsibilities of a second in command.”

(3) If the applicant's flight experience and/or training records are in an electronic form, the applicant must present a paper copy of those records containing the signature of the trainer or qualified management official to an FAA Flight Standards District Office or Examiner.

(4) The applicant must complete and sign an Airman Certificate and/or Rating Application, FAA Form 8710-1, and present the application to an FAA Flight Standards District Office or to an Examiner.

(5) The person who provided the ground and flight training to the applicant must sign the “Instructor's Recommendation” section of the Airman Certificate and/or Rating Application, FAA Form 8710-1. In lieu of the trainer, it is permissible for a qualified management official within the organization to sign the applicant's FAA Form 8710-1.

(6) The applicant must appear in person at a FAA Flight Standards District Office or to an Examiner with his or her logbook/training records and with the completed and signed FAA Form 8710-1.

(7) There is no practical test required for the issuance of the “SIC Privileges Only” pilot type rating.

(e) A person may receive a second-in-command pilot type rating for an aircraft after satisfactorily completing an approved second-in-command training

program or a proficiency check under parts 121, 125, or 135 in that type of aircraft. The person must comply with the following application and pilot certification procedures:

(1) The person who provided the training must sign the applicant's logbook or training record after each lesson in accordance with § 61.51(h)(2) of this part. In lieu of the trainer, it is permissible for a qualified management official within the organization to sign the applicant's training records or logbook and make the required endorsement. The qualified management official must hold the position of Chief Pilot, Director of Training, Director of Operations, or another comparable management position within the organization that provided the training and must be in a position to verify the applicant's training records and that the training was given.

(2) The trainer or qualified management official must make an endorsement in the applicant's logbook that states “[Applicant's Name and Pilot Certificate Number] has demonstrated the skill and knowledge required for the safe operation of the [Type of Aircraft], relevant to the duties and responsibilities of a second in command.”

(3) If the applicant's flight experience and/or training records are in an electronic form, the applicant must provide a paper copy of those records containing the signature of the trainer or

qualified management official to an FAA Flight Standards District Office, an Examiner, or an Aircrew Program Designee.

(4) The applicant must complete and sign an Airman Certificate and/or Rating Application, FAA Form 8710-1, and present the application to an FAA Flight Standards District Office or to an Examiner or to an authorized Aircrew Program Designee.

(5) The person who provided the ground and flight training to the applicant must sign the “Instructor's Recommendation” section of the Airman Certificate and/or Rating Application, FAA Form 8710-1. In lieu of the trainer, it is permissible for a qualified management official within the organization to sign the applicant's FAA Form 8710-1.

(6) The applicant must appear in person at an FAA Flight Standards District Office or to an Examiner or to an authorized Aircrew Program Designee with his or her logbook/training records and with the completed and signed FAA Form 8710-1.

(7) There is no practical test required for the issuance of the “SIC Privileges Only” pilot type rating.

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Issued in Washington, DC, on July 26, 2005.

Marion C. Blakey,
Administrator.

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