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Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Parts 61 and 183

[Docket No. FAA-2010-1127; Notice No. 2010-16]

RIN 2120-AJ42

#### Photo Requirements for Pilot Certificates

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action would require a person to carry a pilot certificate with photo to exercise the privileges of the pilot certificate. This proposal responds to section 4022 of the Intelligence Reform and Terrorism Prevention Act (IRTPA). The FAA previously required all pilots to obtain a plastic certificate (excepting temporary certificates and student pilot certificates). This proposal furthers the fulfillment of IRTPA by requiring a photo of the pilot to be on all pilot certificates. The FAA also proposes to require student pilots to obtain a plastic certificate with photo. Student pilot certificates would also have the same duration as other pilot certificates. Additionally, because of the new photo requirements, this proposal modifies the application process and the fee structure for pilot certificates.

**DATES:** Send your comments on or before February 17, 2011.

**ADDRESSES:** You may send comments identified by Docket Number FAA-2010-1127 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between

9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202-493-2251.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

*Privacy:* The FAA will post all comments received, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://DocketsInfo.dot.gov>.

*Docket:* To read background documents or comments received, go to <http://www.regulations.gov> at any time and follow the online instructions for accessing the docket, or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this proposed rule contact Lance Nuckolls, Certification and General Aviation Operations Branch, AFS-810, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8212; facsimile (202) 267-5094, e-mail [lance.nuckolls@faa.gov](mailto:lance.nuckolls@faa.gov). For legal questions concerning this proposed rule contact Robert Hawks, Air Traffic and Airman/Airport Certification Law Branch, AGC-240, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7143; facsimile (202) 267-7971, e-mail [rob.hawks@faa.gov](mailto:rob.hawks@faa.gov).

**SUPPLEMENTARY INFORMATION:** Later in this preamble under the Additional Information section is a discussion of how you can comment on this proposal and how the FAA will handle your comments. Included in this discussion is related information about the docket, privacy, the handling of proprietary or confidential business information, and accessing related rulemaking documents.

#### Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

Under Subtitle VII, Part A, Subpart iii, Section 44703(b)(1)(C), the FAA may define the terms of an airman certificate the FAA Administrator finds necessary to ensure safety in air commerce. Additionally, Subtitle VII, Part A, Subpart iii, Section 44703(g)(1) permits modifications to the airman certification system to make the system more efficient in serving the needs of those enforcing laws related to combating acts of terrorism by ensuring verifiable identification of individuals applying for airman certificates. In Section 4022 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA),<sup>1</sup> Congress required the FAA to promulgate regulations for the issuance of improved pilot licenses.

This rulemaking is within the scope of that authority because it prescribes the inclusion of a photo of the pilot on the pilot certificate in accordance with the IRTPA mandate. This rulemaking aids in preventing terrorism and in ensuring safety in air commerce by issuing certificates that conform to the IRTPA requirements.

#### Background

On March 12, 1990, the FAA published the Drug Enforcement Assistance notice of proposed rulemaking (55 FR 9270). That NPRM proposed changes to requirements for registration of aircraft, certification of pilots, and certification violations. The FAA intended this proposal to correct deficiencies in the FAA's aircraft registration and pilot certification systems identified in the Federal Aviation Administration Drug Enforcement Assistance Act of 1988 ("the DEA Act").<sup>2</sup> After the close of the comment period, the FAA determined that technological improvements could accomplish most requirements of the DEA Act. The FAA withdrew the NPRM on December 5, 2005 (70 FR 72403).

As part of the technological improvements, the FAA discontinued issuing paper certificates and began issuing plastic airman certificates in 2003. The plastic certificates are of high quality plastic card stock and have micro printing that contains certain

<sup>1</sup> Public Law 108-458, 118 Stat. 3638 (Dec. 17, 2004).

<sup>2</sup> Public Law 100-690, 102 Stat. 4181 (Nov. 18, 1988).

words and phrases, a hologram, and an UV-sensitive layer to resist tampering, altering, and counterfeiting.

On January 5, 2007, the FAA published the Drug Enforcement Assistance notice of proposed rulemaking (“the 2007 DEA NPRM”) (72 FR 489). That NPRM proposed changes to the airman certification and aircraft registration requirements to comply with the mandates of the DEA Act that could not be completed without rulemaking. Among other requirements, the NPRM proposed requiring holders of pilot certificates and other airman certificates to hold a plastic certificate to exercise the privileges of that certificate.

While the FAA was developing the 2007 DEA NPRM, IRTPA became law and added to the FAA’s obligations regarding pilot certificates. Section 4022 of IRTPA requires the FAA to issue improved pilot certificates that (1) are resistant to tampering, alteration, or counterfeiting; (2) include a photograph of the individual to whom the certificate is issued; and (3) are capable of accommodating a digital photograph, a biometric identifier, or any other unique identifier the FAA Administrator considers necessary.

On February 28, 2008, the FAA published the Drug Enforcement Assistance final rule (“the DEA final rule”) (73 FR 10662). In that rule, the FAA required all pilots, except student pilots, to obtain a plastic certificate by March 31, 2010. After that date, pilots without plastic certificates may not exercise the privileges of their certificates. The FAA continued the use of paper temporary pilot certificates and student pilot certificates. The DEA final rule also satisfies the IRTPA requirement to issue pilot certificates that are resistant to tampering, alteration, and counterfeiting.

#### **Other Airman Certificate-Related Rulemaking Activity**

Currently, the Department of Homeland Security’s Transportation Security Administration (TSA) is engaged in ongoing efforts to improve identification, credentialing, and security vetting of persons involved in transportation (49 U.S.C. 44903). Under existing FAA programs, the TSA uses information from the Airman Registry to crosscheck certification records against a variety of terrorism-related databases. Currently, the TSA is considering a rulemaking to improve security vetting of airman certificate holders and applicants for airman certificates. In the interest of reducing burdens on the certificate holder and government, the FAA will continue to consult and collaborate with TSA and other Federal

agencies to reduce potential redundancies or duplication in Federal certification, vetting, and credentialing processes. If the TSA issues a final rule regarding airman security vetting, the FAA may issue conforming requirements in any final rule resulting from this proposal, subsequent to a supplemental notice of proposed rulemaking, or as part of a new rulemaking project, depending on the scope and timing of the TSA’s actions.

#### **Discussion of the Proposal**

The FAA proposes to further fulfill the requirements of section 4022 of the IRTPA by requiring a photo of the pilot on all plastic pilot certificates. This proposal also requires student pilots to have a plastic certificate with photo in order to exercise student pilot privileges. The FAA would continue to allow the use of a paper temporary pilot certificate when upgrading a pilot certificate (such as going from a student to a sport, recreational, or private pilot certificate) or adding a rating (such as an instrument rating). However, the temporary paper certificate evidencing the added authority must be accompanied by the underlying pilot certificate with photo.

The FAA proposes a 5-year phased implementation schedule. This schedule includes a “trigger-based” approach to issue pilot certificates with photos to people interacting with the FAA during the implementation period. The schedule also includes a “non-trigger-based” approach that requires pilots to obtain a pilot certificate with photo during a 3-, 4-, or 5-year period depending on the type of certificate. This proposal would not revoke or otherwise cancel a previously issued paper or plastic certificate. It simply would require the pilot to have a pilot certificate with photo to exercise pilot privileges.

The FAA proposes to add a new § 61.6 to prescribe the requirements related to a pilot certificate with photo. This proposal also amends the application process in § 61.85 to require submission of a photo with an application for a pilot certificate. The FAA also proposes to modify the fee structure related to an application for a pilot certificate with photo to recover some costs associated with issuing a pilot certificate with photo. The FAA also proposes to amend § 61.3 to remove the requirement to carry a separate government-issued photo identification for persons carrying a pilot certificate with photo. The FAA has determined two photo identifications are unnecessary and do not serve a safety or security interest. However, persons with

special purpose pilot authorizations, foreign pilot licenses, or limited-term facsimile pilot certificates still must carry government-issued photo identification. Finally, the FAA proposes minor editorial changes, including some changes to section numbering, to improve ease of use.

The following sections discuss in greater detail the proposals related to the fees for issuing or replacing a pilot certificate with photo, the implementation approach, applying for a pilot certificate with photo, photo requirements, duration of pilot privileges for pilot certificates with photos, student pilot certificates, and other issues.

#### *Fees for Issuing or Replacing a Pilot Certificate With Photo*

Currently, the FAA charges a \$2 fee to replace a lost or destroyed airman certificate. There is no charge for issuing, upgrading, or adding ratings to an airman certificate. 14 CFR 61.29(a). Although the FAA has statutory authority to charge a fee for issuing a pilot certificate, the FAA previously has not exercised that authority. 49 U.S.C. 45302. That authority permits the FAA to charge a maximum fee of \$22.00 (\$12.00 adjusted according to the Consumer Price Index of All Urban Consumers published by the Secretary of Labor). 49 U.S.C. 45302(b)–(c).

Congress required the FAA to change from issuing paper pilot certificates to issuing plastic certificates with photos and other security measures.<sup>3</sup> The cost of issuing these new certificates is substantial. To recover some of these costs, the FAA proposes to exercise its statutory authority to collect a fee when issuing a pilot certificate with a photo and other security features.

Specifically, the FAA proposes to charge a \$22 fee to process an application for: (1) Exchanging an existing certificate without a photo for a certificate with photo; (2) issuing a new pilot certificate or student pilot certificate; and (3) replacing a pilot certificate with photo whenever a replacement certificate is requested by a pilot or required by regulation. Examples of events which would require a replacement certificate include renewing expired photos, achieving new ratings or certificate levels, changing name or citizenship information, and replacing lost or destroyed certificates. As shown in the regulatory evaluation, the \$22 fee does not recover fully the cost of issuing pilot certificates, but the FAA may not exceed its statutory authority to recover costs. Accordingly,

<sup>3</sup> IRTPA § 4022(b).

the FAA proposes to include this fee schedule for a pilot certificate with photo in the new § 61.6.

The FAA also proposes to adjust this fee periodically to correspond with changes in the Consumer Price Index, as permitted by 49 U.S.C. 45302(c). Any fee adjustment would not occur more than once a year and would not exceed the FAA's cost for issuing a certificate. Any calculation of issuance cost would be performed in the same manner as that performed for this proposed rule.

The Federal Aviation Administration Reauthorization bill (H.R. 915), if enacted as passed by the House of Representatives on May 21, 2009, would provide authority to increase fees for airman certificates. This legislation would allow the FAA to recover the costs related to airman certification, and the legislation sets the fee for issuing an airman certificate at \$50 and for issuing a replacement airman certificate at \$25. Once the outcome of the reauthorization legislation is known, the FAA would decide whether additional rulemaking is necessary.

Since this proposal would require in-person identity verification, the FAA anticipates allowing designees to accept and verify applications for pilot certificates with photos to lessen the inconvenience to certificate holders and new applicants. The FAA anticipates that designees would charge a fee, in addition to the fee charged by the FAA, to accept and verify the applications. The FAA cannot set or limit fees charged by designees. This fee likely would be independent of any fee charged by a designee for testing services provided to the applicant.

#### *Implementation Approach*

The FAA would begin issuing a pilot certificate with photo to an applicant for a new pilot certificate once the rule becomes effective. For the FAA to comply with IRPTA, it must reissue all existing pilot certificates with a pilot certificate with photo. To minimize the burden of reissuance on certificate holders, the FAA proposes a concurrent "trigger-based" and "non-trigger-based" implementation approach.

Many pilots already would interact with the FAA during the implementation period of this proposed rule because of a "triggering event." They would be required to apply for a pilot certificate with photo as a result of that interaction. One triggering event would be applying for a new pilot certificate or rating, including a student pilot certificate. A pilot obtaining a new flight instructor certificate or renewing a flight instructor certificate would also be required to apply for a pilot

certificate with photo for the underlying pilot certificate. The FAA does not propose requiring all persons requesting replacement pilot certificates during the implementation period to apply for a pilot certificate with photo. However, replacement activity requiring an in-person interaction with the FAA (for example, change of name, citizenship, date of birth, or gender) would be a triggering event. The FAA proposes to require pilots interacting with the FAA during one of these triggering events to provide a photo with the application. These pilots would not be subject to the proposed phase-in requirements because they would already comply with the proposed rule.

Because not all pilots will have a triggering event during the implementation period, the FAA proposes a phased approach for requiring an application for a pilot certificate with photo. A pilot with an airline transport pilot (ATP) certificate would have 3 years after the final rule becomes effective to obtain a pilot certificate with photo. A person with a commercial pilot certificate would have 4 years after the effective date of the final rule. Finally, a private, recreational, or sport pilot certificate holder would have 5 years after the effective date of the final rule. Pilots who do not obtain a certificate with photo during the appropriate period would not be able to exercise pilot privileges after the cut-off date.

The FAA chose different cut-off dates based on certificate level to provide the most time for private, sport, and recreational pilots. Those pilots are the least likely to have regular contact with the FAA. ATP and commercial pilot certificate holders usually have more regular contact with the FAA than other types of pilots.

The FAA believes that these periods are reasonable to allow for the timely replacement of pilot certificates. The phased implementation approach balances the FAA's ability to receive and process applications for replacement certificates and to maintain the FAA's existing range of services. The FAA assumes that applications would be evenly spread throughout the implementation period. If all pilots wait until close to the end of the period to apply for the certificate, there undoubtedly would be delays in processing and receipt of the new certificate. A pilot may apply for a certificate with photo after the specific implementation period ends, but he or she would not be able to exercise pilot privileges until he or she has a pilot certificate with photo. The FAA

proposes to add this implementation schedule to § 61.19.

#### *Applying for a Pilot Certificate With Photo*

The FAA would require a pilot to submit an application for a new or replacement pilot certificate with photos in person in certain cases. For these in-person applications, a pilot must appear at a FSDO or other FAA designee (such as a Knowledge Testing Center or designated pilot examiner (DPE)). All certificate holders applying for a pilot certificate for the first time would submit that application in person for purposes of identity verification. After a person holds a pilot certificate with photo, there would be certain situations for which an in-person application is required. If the photo would expire within 90 days of the application, a pilot would submit the application in person. A pilot changing vital information on the certificate, such as name, date of birth, citizenship, or gender, would still be required to apply in person so the FAA could verify the applicant's identity. Finally, a pilot who upgrades his or her certificate or adds a rating would still apply for a new certificate in person.

A pilot who wants to add or update the photo on the certificate may do so using one of two methods. The first method would be to submit a paper photo with a paper 8710-1 Airman Certificate and/or Rating Application form. The second method would be to use the Web-based Integrated Airman Certificate and/or Rating Application (IACRA) form. However, regardless of the method used, a pilot must appear in person to either a FSDO or any authorized FAA-designee to have his or her photo and identification validated whenever a photo is required as part of the application. Currently, the FAA operates 96 FSDOs in the U.S. and has approximately 2,700 designees worldwide that can process applications for pilot certificates with photo. A pilot residing outside of the U.S. must use an FAA-designee who is authorized to service his or her area. Alternately, the pilot may come to the U.S. and use any FAA-designee or FSDO.

In some cases, the FAA would allow a pilot to submit an application for a pilot certificate with photo by mail. These instances would not require an in-person application because the pilot has established his or her identity with the FAA, and the changes to the certificate do not affect the pilot's identity. For example, a pilot could submit an application to replace a lost or destroyed certificate with photo without an in-person interaction.

Additionally, a pilot could notify the FAA of a change of address by mail or via the FAA website. Although not required by regulation, the pilot could request a replacement certificate when making the change of address. When requesting a replacement pilot certificate with photo in these situations, the pilot must have a photo on file that does not expire within 90 days of the application.

#### *Photo Requirements*

The FAA proposes a new § 61.6 to prescribe the photo requirements for pilot certificates. The FAA would require an applicant to submit a 2 x 2-inch photo with the application. The photo must be unretouched and in color. The photo must be of only the applicant and must have been taken within the last six months. It also must show a full front view of the applicant's face in such a way that the area from the bottom of the applicant's chin to the top of the applicant's head (including hair) covers more than 50 percent but not more than 75 percent of the total area of the photo. The photo must show the applicant in front of a plain light-colored background and in normal street attire. If an applicant chose to wear a pilot uniform, the FAA would consider that applicant to be wearing normal street attire, provided the photo did not show the applicant wearing a hat, head covering, or dark glasses as prescribed in § 61.6. These requirements are consistent with Department of State guidelines for passport photos. Therefore, an applicant for a pilot certificate with photo should be able to obtain the required photo from any passport photo vendor.

At this time, the FAA is prepared to accept only a hard copy of a photo, similar to the Department of State's passport model. In the future, however, the FAA anticipates accepting a digital photo. The FAA would revise its guidance material as technology advances and additional methods are available for photo submission.

Currently the FAA is considering three methods of acquiring a digital photo. One way would be for an applicant to upload a digital photo into FAA's Integrated Airman Certificate and/or Rating Application (IACRA) sub-system. IACRA is an Internet-based database program providing a fully-electronic method of applying for an airman certificate or rating. IACRA can accommodate submission of digital images.

The second method to acquire a digital photo would be for an applicant to go to a Knowledge Testing Center, which is a logical venue for verifying

identity and taking digital photos. Currently there are two major testing companies that are authorized to perform knowledge testing for the FAA via Knowledge Testing Centers. These testing centers are located to serve a wide geographic range (approximately 960 nationwide centers and 9 international locations). Usually, people do not have to travel more than 100 miles to get to a testing center.

The third method to acquire a digital photo would be for an applicant to go to a DPE or a FSDO that has the capability to take digital photos. Currently, FSDOs have this capability, but DPEs do not. However, the FAA anticipates they would have this capability in the future.

#### *Duration of Pilot Privileges for a Pilot Certificate With Photo*

Because the accuracy of a photo degrades over time, the FAA proposes to include a photo expiration date on the pilot certificate with photo. As under current regulations, the actual pilot certificate would not expire but would remain valid unless surrendered, suspended, or revoked. However, the pilot may not exercise the privilege of the certificate after the photo expiration date. Therefore, the pilot must renew the photo in order to continue to exercise the pilot privileges of the certificate past the photo expiration date.

The FAA considered different photo durations, specifically an 8-year duration (similar to that required by the Real ID Act) and a 10-year duration (similar to that used for passports). The Real ID Act of 2005<sup>4</sup> imposes certain security, authentication, and issuance procedure standards for state driver's licenses and identification cards for them to be accepted by the federal government for official purposes. The FAA acknowledges that the Real ID Act does not require the FAA to set any specific duration with respect to a pilot certificate with photo. The Department of State traditionally has issued passports that are valid for 10 years. This practice was established well before the Real ID Act became law and was established in response to different concerns than those to which the Real ID Act responds. The FAA proposes an 8-year duration. This duration is consistent with the Real ID Act, which is Congress's latest expression on the appropriate period of validity for government identification. The FAA proposes to amend § 61.19 to prescribe a photo expiration date of 8 years after

the month in which the FAA issues the pilot certificate. The FAA also proposes to place the photo expiration date on the pilot certificate with photo to remind certificate holders of when a new photo must be submitted.

Under this proposal, it would be the pilot's responsibility to apply for a replacement certificate and provide a new, current photo before the photo expiration date. It is important to note that the issuance of a pilot certificate with photo could take up to 6 to 8 weeks. Therefore, a pilot should plan to submit an application, with a new photo, well before the photo expiration date on the current pilot certificate. If the photo expiration date passes before the pilot receives a replacement pilot certificate with photo, the FAA would not issue temporary privileges, and the pilot could not exercise pilot privileges.

For applications received in the 180 days before the photo expiration date, the FAA would issue a certificate with a photo expiration date that is 8 years from the previous certificate's photo expiration date. If a pilot requests changes to a certificate, such as changing the certificate level or adding a rating, the FAA would issue a new certificate with the current photo on file. That certificate would have the same photo expiration date as the certificate that it is replacing. However, if a pilot wishes to submit a new photo, the FAA would issue a certificate with a photo expiration date of 8 years from the month of issue. If the photo would expire within the next 90 days, the pilot must submit a new photo with the application for a certificate.

#### *Student Pilot Certificates*

The FAA includes student pilot certificates in this proposal to meet the IRTPA requirements that apply to all pilot certificates. The Drug Enforcement Assistance final rule, which required plastic pilot certificates, did not include student pilot certificates. Therefore, the FAA proposes to require all student pilot certificates to be made of plastic and include a photo of the certificate holder. As a result, only the FAA's Airman Certification Branch (AFS-760) would issue student pilot certificates.

The FAA proposes to discontinue use of an Aviation Medical Examiner (AME) for the application and issuance of a student pilot certificate. Currently, AMEs may issue both a medical certificate and a student pilot certificate (often referred to as a combination certificate). Except in the case of glider, balloon, and light sport aircraft, a student pilot's first contact with the FAA usually is through an AME because of the medical certificate requirement. It

<sup>4</sup>Public Law 109-13, 119 Stat. 231 (May 11, 2005).

is convenient for a student pilot to apply for a student pilot certificate at the same time as for a medical certificate. However, under this proposal, student pilots must obtain a student pilot certificate with photo. Because an AME's principal function is to perform the medical evaluation, the FAA has determined that it is inappropriate to burden the AME with information-gathering and photo-verification duties. Accordingly, under this proposal, a person wishing to obtain a student pilot certificate would still obtain a medical certificate from an AME; however, that person may not apply for a student pilot certificate with an AME. A student pilot would obtain a student pilot certificate with photo that is issued by the FAA Airman Certification Branch (AFS-760) prior to conducting solo flights. The FAA proposes to amend § 61.85 to prescribe the application process for student pilot certificates and § 183.21 to relieve AMEs from issuing student pilot certificates.

Also, under this proposal, Designated Pilot Examiners (DPEs) no longer would issue student pilot certificates. However, DPEs would be authorized to accept an application for a student pilot certificate. In addition, designated knowledge testing centers, designated airmen certification representatives, local Flight Standards District Offices (FSDOs), and International Field Offices would be authorized to accept an application for a student pilot certificate.

Because the student pilot certificate would be issued by the FAA's Airmen Certification Branch instead of by Aviation Safety Inspectors or FAA designees, student pilots, instructors, and pilot schools should plan accordingly for the additional time it would take to receive a plastic student pilot certificate with photo. At this time, the FAA estimates that it could take up to 6 to 8 weeks for the FAA to issue a student pilot certificate. As under the current regulations, students still can receive instruction, but they may not engage in solo flight before receiving a student pilot certificate.

Currently, a student pilot certificate expires either 24 or 60 calendar months after issuance depending on the age of the student pilot or on the rating sought. Because of the proposed change in procedure to obtain a student pilot certificate, the FAA proposes to issue student pilot certificates that do not expire. Like other pilot certificates, a student pilot certificate would remain valid unless surrendered, suspended, or revoked. However, the student pilot certificates would have a photo expiration date of 8 years after the

month of issuance. This duration is consistent with the duration of other pilot certificates because the FAA has concluded there is no purpose to treating student pilot certificates differently from other pilot certificates. A student pilot would not be able to exercise the privileges of the certificate after the photo expiration date unless he or she submitted a new photo.

A student pilot certificate issued prior to the effective date of this rule would continue to be valid until the expiration date shown on the face of that certificate. If a person wishes to obtain a replacement student pilot certificate, he or she may apply for a student pilot certificate with photo. Because student pilot certificates currently expire after either 24 or 60 months, all student pilots would be using a student pilot certificate with photo before the end of the 5-year implementation period established by this proposal for obtaining a pilot certificate with photo.

The FAA also proposes to make conforming changes regarding the placement of solo flight endorsements on student pilot certificates. Because it is not possible to make the currently-required solo flight endorsements on a plastic student pilot certificate, the FAA proposes to amend §§ 61.87, 61.93, and 61.133 to require that those endorsements be made in only the student pilot's logbook. The FAA also proposes to amend §§ 61.189 and 61.195 to require flight instructors to place those endorsements in only the student pilot's logbook. The FAA proposes to amend § 61.13(a)(2)(i)(A) so that it would apply to an application for a student pilot certificate because student pilot certificates would be issued only by the FAA Airman Certification Branch (AFS-760).

#### *Other Issues*

Currently § 61.29(e) allows a person to obtain a facsimile airman certificate<sup>5</sup> if the original certificate is lost or destroyed. The FAA Airman Certification Branch issues facsimile certificates so that an airman may continue to exercise privileges until a replacement pilot certificate is issued. This facsimile is valid for 60 days. Although this facsimile does not meet the IRTPA requirements, the FAA proposes to leave the facsimile provision unchanged. The replacement of a pilot certificate with photo would take up to 6 to 8 weeks during which time a pilot effectively would be

<sup>5</sup> Currently, the Airman Certification Branch issues a paper temporary certificate, a faxed temporary authority, or an e-mail temporary authority.

grounded. The FAA has concluded that grounding a pilot for an extended time period is unnecessary. The FAA would treat the facsimile pilot certificate as a special purpose pilot authorization that may be used in conjunction with a government-issued photo identification under § 61.3. This treatment would allow a pilot whose identity has been certified by the FAA to continue to exercise pilot privileges while allowing security agencies to verify the pilot's identity against a government-issued identification.

#### *Comments Invited*

The FAA is specifically interested in receiving comments on the following questions:

(1) While this proposal does not outline specific identity verification standards and processes, the FAA may include such standards and processes in a final rule. The FAA seeks comment on standards that should be used for identity verification to issue pilot photo certificates, either in person or remotely. Should the FAA require applicants to produce fraud-resistant documents to verify identity? If so, which documents or other identity verification procedures should the FAA implement to ensure a high level of confidence in the verification process?

(2) Should the FAA consider an alternative implementation approach to the "trigger" and "non-trigger" approach set forth in the proposal? Should the FAA set one deadline, regardless of certificate level, for pilots to have a pilot certificate with photo to exercise the privileges of that certificate rather than implement the phased "non-trigger" approach set forth in this proposal? What is the basis and supporting data for a single deadline? If the FAA were to implement a single deadline, what time period for conversion to a pilot certificate with photo adequately balances the FAA's need to comply with the statutory mandate and the burden on certificate holders? Would lengthening the implementation period significantly reduce burden on a pilot? What is the basis and supporting data for a longer time period?

(3) Currently, the FAA envisions using Knowledge Testing Centers, DPEs, and FSDOs to accept pilot certificate applications and validate applicant identity. Are there alternative, potentially less burdensome, methods for pilots within the U.S. and outside of the U.S. the FAA should consider? In addition, what should the FAA consider when designating service providers with identity verification authority?

(4) Is the proposed 8-year duration for the photo, based on the photo duration

for state driver's licenses under the Real ID Act, a reasonable period of time that balances the security needs expressed in IRTPA and the burden on certificate holders? Are there other standards or guidance for photo accuracy the FAA should consider? What is the basis and supporting data for a shorter or longer duration?

(5) Is there any reason why student pilot certificates should not be treated like other pilot certificates for the purposes of meeting the IRTPA requirements? What is the basis and supporting data for your response?

(6) With respect to the photo that is placed on the pilot certificate, should the FAA accept only hard copy photos, only digitally-captured photos, or either hard copy or digitally-captured photos? What is the basis and supporting data for your response?

(7) If the FAA accepts digitally-captured photos, what are the advantages and disadvantages of the following methods of acquiring the photo: (a) An applicant uploading a self-captured photo to the IACRA sub-system; (b) a FSDO capturing the photo when the application is submitted; (c) a Knowledge Testing Center capturing the photo when an application is submitted; and (d) a DPE capturing the photo when an application is submitted? What is the basis and supporting data for your response?

**Paperwork Reduction Act**

This proposal contains the following revisions to existing information collection requirements. As required by the Paperwork Reduction Act of 1995, the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review. See 44 U.S.C. 3507(d).

*Title:* Photo Requirements for Pilot Certificates

*Summary:* This action would require a person to carry a pilot certificate with photo to exercise the privileges of the pilot certificate. This proposal responds to section 4022 of the Intelligence Reform and Terrorism Prevention Act (IRTPA). The FAA previously required all pilots to obtain a plastic certificate (excepting temporary certificates and student pilot certificates), and after March 31, 2010, all pilots must carry a plastic certificate. This proposal furthers the fulfillment of IRTPA by requiring a photo of the pilot to be on all pilot certificates. The FAA also proposes to require student pilots to obtain a plastic certificate with photo and treats student pilot certificates equally with other pilot certificates for durational purposes. Additionally, because of the photo requirement on pilot certificates, this proposal modifies the process for obtaining a pilot certificate and the fee structure for processing an application for a pilot certificate with photo. This revision affects the existing information

collection requirements of FAA Form 8710-1 "Airman Certificate and/or Rating Application" (OMB Approval Number 2120-0021).

*Use of:* This proposed rule is in direct response to section 4022 of the Intelligence Reform and Terrorism Prevention Act (IRTPA). This request for clearance reflects requirements necessary under Title 14 CFR part 61 to require a person to carry a pilot certificate with photo to exercise the privileges of the pilot certificate. The FAA will use the information it collects and reviews to ensure compliance and adherence to regulations and, where necessary, to take enforcement action on violators of the regulations.

*Respondents (including number of):* The FAA estimates there are 740,442 pilots who would be required to provide information in accordance with the proposed rule. The respondents to this proposed information requirement are pilots regulated under part 61.

*Frequency:* The FAA estimates certificate holders will have a one-time information collection, and will then collect or report information occasionally thereafter.

*Annual Burden Estimate:* This proposal would result in a 20-year recordkeeping and reporting burden as follows:

*Summary of time and costs (20-year):*

The following table sums up the costs and time:

	Total cost	Annual cost	Total time	Annual time
<b>Pilot-related costs:</b>				
Trigger—Initial Registration .....	\$4,221,982	\$211,099	82,923.34	4,146.17
Non-Trigger—Initial Registration .....	191,555,276	9,577,764	3,521,734.67	176,086.73
Non-Trigger—Renewal .....	149,053,511	7,452,676	2,740,341.74	137,017.09
Additional/Replacement .....	9,654,806	482,740	363,509.25	18,175.46
<b>Portals:</b>				
KTC .....	10,100,840	505,042	655,048.00	32,752.40
DPE .....	17,545,925	877,296	233,945.67	11,697.28
FAA Contractor .....	5,328,284	266,414	N/A	N/A
<b>Total .....</b>	<b>387,460,624</b>	<b>19,373,031</b>	<b>7,597,502.66</b>	<b>379,875.13</b>

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate

automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement by January 18, 2011 and should direct them to the address listed in the Addresses section at the beginning of this preamble. Comments also should be submitted to the Office of Information and Regulatory Affairs, OMB, New Executive Building, Room 10202, 725 17th Street, NW.,

Washington, DC 20053, Attention: Desk Officer for FAA.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR § 1320.8(b)(2)(vi)), 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 OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

### International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this rulemaking is consistent with ICAO Standards and Recommended Practices.

### Regulatory Evaluation, Regulatory Flexibility Determination, International 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 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) 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, that they 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 with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. The FAA suggests readers seeking greater detail read the full regulatory evaluation, a copy of which is in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this rule: (1) Has benefits that justify its costs, (2) is not an "economically significant regulatory action" but is a "significant regulatory action" for other reasons as defined in section 3(f) of Executive Order 12866, (3) is "significant" as defined in DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and

(6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

#### Summary

In this analysis, the FAA estimated future costs for a 20-year period, from 2010 through 2029. All costs in this analysis are in 2008 dollars.

There are currently about 740,000 pilots and 93,000 CFIs that would be covered by this proposal. Given future projected growth in all pilot categories and given the requirement to renew every 8 years, the FAA anticipates that the FAA would process 4.40 million photo IDs from 2010 to 2029.

Costs to pilots would sum to \$445.8 million (\$235.8 million, present value) over the above 20-year period. This includes the costs of the pilots providing hard copy photos and a Form 8710–1 to a portal designee, either a Knowledge Testing Center, Designated Pilot Examiner, or Flight Service District Office. These portals would incur costs of \$33.2 million (\$17.6 million, present value) to process this information and pass it on to the Airman Registry at the FAA. The FAA would incur costs of \$239.8 million (\$126.7 million, present value) to process the certificates. Total costs, over 20 years, sum to \$718.7 million (\$380.1 million, present value).

This proposal responds to IRTPA by requiring digital photos on all pilot certificates. Congress has mandated that the FAA improve pilot licenses by including a photo on the license. The proposal requiring owners to personally appear before authorized persons and to produce proof of identity including photo identification would be a significant help in the prevention of fraudulent and fictitious registration.

#### Initial 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 determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

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 1980 act 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.

A number of commercial pilots are employed as crop dusters, as passenger and freight charter operators, in aerial photography and mapmaking businesses, in sightseeing businesses, and/or in flight schools, many of which are small businesses. The FAA does not have data as to how many such pilots are employed in each of these businesses. While in a rural setting, the entire process may take half a day, the pilot would have large latitude in choosing which day to get the certificate. These types of small businesses are often seasonal, meaning that in almost all cases, the pilot would not have to miss a day of work in order to get a pilot certificate with photo.

The cost impact to any one pilot and to any business would not be large. The average cost to a pilot in a "non-trigger" event is higher than that of a "trigger" event as the time and mileage needs to be taken into account as well as the portal costs. The average cost for a "non-trigger" event is about \$175. These commercial pilots would have a phase-in period of 4 years and then would have to renew every 8 years. Thus, over a 20-year period, such a pilot would have to get 3 pilot certificates, for a cost of about \$375; the average annual cost is \$19, which is not a significant impact.

Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

#### International Trade Impact Statement

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States.

Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it would have only a domestic impact and therefore would not create unnecessary obstacles to the foreign commerce of the United States.

#### *Unfunded Mandates Determination*

Title II of the Unfunded Mandates Reform Act of 1995 (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 an 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 \$136.1 million in lieu of \$100 million.

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

#### **Executive Order 13132, Federalism**

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would 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, would 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 this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

#### **Regulations That Significantly Affect Energy Supply, Distribution, or Use**

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

#### **Additional Information**

##### *Comments Invited*

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views on any issue raised in this rulemaking. The FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

All comments received will be filed in the docket, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments received.

##### *Availability of Rulemaking Documents*

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies/](http://www.faa.gov/regulations_policies/); or
3. Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to

identify the docket number, notice number, or amendment number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the internet through the Federal eRulemaking Portal referenced in paragraph (1).

#### **List of Subjects in 14 CFR Parts 61 and 183**

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

#### **The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 § 61.3 by revising paragraphs (a), (d)(2)(iv), and paragraph (l) introductory text to read as follows:

##### **§ 61.3 Requirement for certificates, ratings, and authorizations.**

(a) *Pilot certificate.* (1) A person may not serve as a required pilot flight crewmember of a civil aircraft of the United States, unless that person:

(i) Has a pilot certificate issued under this part and in accordance with § 61.19;

(ii) Has a special purpose pilot authorization issued under § 61.77;

(iii) Has a temporary certificate issued under § 61.17;

(iv) Has a facsimile certificate issued under § 61.29; or

(v) When operating an aircraft within a foreign country, has a pilot license issued by that country.

(2) The pilot certificate or special authorization must be in the person's physical possession or readily accessible in the aircraft when exercising the privileges of that pilot certificate or authorization.

(3) If the pilot certificate or authorization is not a pilot certificate with photo, a person may not serve as a required pilot flight crewmember of a civil aircraft of the United States, unless that person has a photo identification in that person's physical possession or readily accessible in the aircraft when exercising the privileges of that pilot certificate or authorization. The photo identification must be a:

(i) Driver's license issued by a State, the District of Columbia, or a territory or possession of the United States;

(ii) Government identification card issued by the Federal government, a State, the District of Columbia, or a territory or possession of the United States;

(iii) U.S. Armed Forces' identification card;

(iv) Official passport;

(v) Credential that authorizes unescorted access to a security identification display area at an airport regulated under 49 CFR part 1542; or

(vi) Other form of identification that the Administrator finds acceptable.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(iv) Endorse a logbook for solo operating privileges.

\* \* \* \* \*

(1) *Inspection of certificate.* Each person who holds an airman certificate, medical certificate, authorization, or license required by this part must present it and, unless the pilot certificate contains a photo, a photo identification as described in paragraph (a)(2) of this section for inspection upon a request from:

\* \* \* \* \*

3. Add a new § 61.6 to read as follows:

**§ 61.6 Pilot certificate with photo and photo requirements.**

(a) *Trigger-based implementation.* Except as provided in § 61.19(h)(2), after [effective date of final rule], all persons must apply for a pilot certificate with photo and provide a photo that conforms to the requirements prescribed in paragraph (b) of this section when:

(1) Obtaining a new pilot certificate or rating (including student pilot certificate);

(2) Obtaining a new flight instructor certificate;

(3) Renewing a flight instructor certificate; or

(4) Obtaining a replacement pilot certificate resulting from a change of name, citizenship, date of birth, or gender.

(b) *Photo Requirements.* (1) A photo provided with an application for a new or replacement pilot certificate with photo must—

(i) Be unretouched and in color;

(ii) Be a recent likeness of only the applicant (taken within the last six months) and show a full front view of the applicant's face in such a way that the area from the bottom of the applicant's chin to the top of the applicant's head (including hair) covers more than 50 percent but not more than

75 percent of the total area of the photo; and

(iii) Show the applicant in front of a plain light-colored background and in normal street attire, without a hat, head covering, or dark glasses unless a signed statement is submitted by the applicant verifying the item is worn daily for religious purposes or a signed doctor's statement is submitted verifying the item is used daily for medical purposes.

(2) A photo provided with an application for a pilot certificate or rating must measure 2 x 2 inches in size.

(c) *Application for new or replacement pilot certificate with photo.*

(1) A photo of the applicant that conforms to the requirements prescribed in paragraph (b) of this section must accompany each application for a new or replacement pilot certificate with photo unless the applicant previously submitted a photo and that photo has not expired or will not expire within 90 days of the application.

(2) An applicant for a pilot certificate with photo must make an application accompanied by a photo at a place designated by the Administrator.

(3) An applicant for a replacement pilot certificate with photo who has a current photo on file may make an application that is not accompanied by a photo at a place designated by the Administrator or by mail to the Department of Transportation, FAA, Airman Certification Branch, P.O. Box 25082, Oklahoma City, OK 73125.

(4) Payment to the FAA of the fee specified in paragraph (d) of this section by check, money order, or other payment method approved by the Administrator must accompany each application for a new or replacement pilot certificate with photo.

(d) *Fee for issuance of pilot certificate with photo.* The fee for processing an application for a new or replacement pilot certificate with photo is \$22. The FAA periodically may increase this fee to correspond with changes in the Consumer Price Index.

4. Amend § 61.13 by revising paragraphs (a)(1) and (a)(2)(i)(A) to read as follows:

**§ 61.13 Issuance of airman certificates, ratings, and authorizations.**

(a) *Application.* (1) An applicant for an airman certificate, rating, or authorization under this part must make that application on a form acceptable to the Administrator and at a place designated by the Administrator. In addition, an applicant for a pilot certificate with photo must make that application as prescribed in § 61.6.

(2) \* \* \*

(i) \* \* \*

(A) Application for student pilot certificate that is received outside the United States; or

\* \* \* \* \*

5. Amend § 61.19 by revising paragraphs (a), (b), and (c), and (g) to read as follows:

**§ 61.19 Duration of pilot and instructor certificates and privileges.**

(a) *General.* (1) Except for a student pilot certificate or flight instructor certificate issued with an expiration date, a pilot certificate is valid unless it is surrendered, suspended, or revoked.

(2) A pilot certificate with photo is issued with a photo expiration date after which the holder of the certificate may not exercise the privileges of that certificate.

(b) *Paper student pilot certificate.* A student pilot certificate issued under this part prior to [effective date of final rule] expires:

(1) For student pilots who have not reached their 40th birthday, 60 calendar months after the month of the date of examination shown on the medical certificate.

(2) For student pilots who have reached their 40th birthday, 24 calendar months after the month of the date of examination shown on the medical certificate.

(3) For student pilots seeking a glider rating, balloon rating, or a sport pilot certificate, 60 calendar months after the month of the date issued, regardless of the person's age.

(c) *Pilot certificates.* (1) A pilot certificate (other than a student pilot certificate) issued under this part prior to [effective date of final rule] is issued without a specific expiration date.

(2) A pilot certificate, including a student pilot certificate, issued under this part after [effective date of final rule] contains a photo expiration date that is 96 months from the month in which a photo is submitted for inclusion on the certificate.

(3) The holder of a pilot certificate issued on the basis of a foreign pilot license may exercise the privileges of that certificate only while that person's foreign pilot license is effective.

\* \* \* \* \*

(g) *Duration of pilot certificates.*

(1) Except for a temporary certificate issued under § 61.17 or a student pilot certificate issued under paragraph (b) of this section, the holder of a paper pilot certificate issued under this part may not exercise the privileges of that certificate after March 31, 2010.

(2) Except for a temporary certificate issued under § 61.17 or a facsimile certificate issued under § 61.29, no person may exercise the privileges of a

particular certificate as pilot in command or in any other capacity as a required pilot flight crewmember of a civil aircraft of U.S. registry unless that person has a photo on his or her pilot certificate after:

(i) [Date 3 years after publication of final rule] for a pilot holding an airline transport pilot certificate;

(ii) [Date 4 years after publication of final rule] for a pilot holding a commercial pilot certificate; or

(iii) [Date 5 years after publication of final rule] for a pilot holding a private, recreational or sport pilot certificate.

6. Amend § 61.25 by adding paragraph (c) to read as follows:

§ 61.25 Change of name.

\* \* \* \* \*

(c) For applications for a pilot certificate with photo, an applicant must make that application as prescribed in § 61.6.

7. Amend § 61.29 by revising the section heading, revising paragraphs (a), (b), (c), (d) introductory text, and (e) introductory text to read as follows:

§ 61.29 Replacement of a pilot certificate with photo and replacement of lost or destroyed airman or medical certificate or knowledge test report.

(a)(1) Pilot certificate with photo. A request for the replacement of a pilot certificate with photo issued under this part must be made as prescribed in § 61.6.

(2) Other airman certificate. A request for the replacement of a lost or destroyed airman certificate issued under this part must be made by letter to the Department of Transportation, FAA, Airman Certification Branch, P.O. Box 25082, Oklahoma City, OK 73125, and must be accompanied by a check or money order for the appropriate fee payable to the FAA.

(b) Medical certificate. A request for the replacement of a lost or destroyed medical certificate must be made by letter to the Department of Transportation, FAA, Aerospace Medical Certification Division, P.O. Box 26200, Oklahoma City, OK 73125, and must be accompanied by a check or money order for the appropriate fee payable to the FAA.

(c) Knowledge test report. A request for the replacement of a lost or destroyed knowledge test report must be made by letter to the Department of Transportation, FAA, Airman Certification Branch, P.O. Box 25082, Oklahoma City, OK 73125, and must be accompanied by a check or money order for the appropriate fee payable to the FAA.

(d) Request for replacement. The letter requesting replacement of a pilot

certificate with photo or a lost or destroyed airman certificate, medical certificate, or knowledge test report must state:

\* \* \* \* \*

(e) Facsimile airman certificate, medical certificate, or knowledge test report. A person who has lost an airman certificate, medical certificate, or knowledge test report may obtain a facsimile from the FAA Aeromedical Certification Branch or the Airman Certification Branch, as appropriate, confirming that it was issued and the:

\* \* \* \* \*

8. Revise § 61.85 to read as follows:

§ 61.85 Application.

An applicant for a student pilot certificate:

(a) Must make that application in a form acceptable to the Administrator;

(b) Must provide a photo of the applicant that conforms to the photo requirements set forth in § 61.6 with the application;

(c) Must submit the application to a designee authorized by the Administrator or to a Flight Standards District Office; and

(d) Must submit payment for the application fee as directed in § 61.6.

9. Amend § 61.87 by revising paragraph (n), by adding the word "and" after the semicolon in paragraph (p)(3), removing paragraph (p)(4), and redesignating paragraph (p)(5) as paragraph (p)(4) to read as follows:

§ 61.87 Solo requirements for student pilots.

\* \* \* \* \*

(n) Limitations on student pilots operating an aircraft in solo flight. A student pilot may not operate an aircraft in solo flight unless that student pilot has received an endorsement in the student's logbook for the specific make and model aircraft to be flown by an authorized instructor who gave the training within the 90 days preceding the date of the flight.

\* \* \* \* \*

10. Amend § 61.93 by revising paragraphs (c)(1) and (c)(2) and adding paragraph (c)(3) to read as follows:

§ 61.93 Solo cross-country flight requirements.

\* \* \* \* \*

(c) \* \* \*

(1) A student pilot must have a solo cross-country endorsement from the authorized instructor who conducted the training that is placed in that person's logbook for the specific category of aircraft to be flown.

(2) A student pilot must have a solo cross-country endorsement from an

authorized instructor that is placed in that person's logbook for the specific make and model of aircraft to be flown.

(3) For each cross-country flight, the authorized instructor who reviews the cross-country planning must make an endorsement in the person's logbook after reviewing that person's cross-country planning, as specified in paragraph (d) of this section. The endorsement must—

(i) Specify the make and model of aircraft to be flown;

(ii) State that the student's preflight planning and preparation is correct and that the student is prepared to make the flight safely under the known conditions; and

(iii) State that any limitations required by the student's authorized instructor are met.

\* \* \* \* \*

11. Amend § 61.133 by revising paragraphs (a)(2)(i)(C) and (a)(2)(ii)(C) to read as follows:

§ 61.133 Commercial pilot privileges and limitations.

(a) \* \* \*

(2) \* \* \*

(i) \* \* \*

(C) Endorse a pilot's logbook for solo operating privileges in an airship;

\* \* \* \* \*

(ii) \* \* \*

(C) Endorse a pilot's logbook for solo operating privileges in a balloon; and

\* \* \* \* \*

12. Amend § 61.189 by revising paragraph (b)(1) to read as follows:

§ 61.189 Flight instructor records.

\* \* \* \* \*

(b) \* \* \*

(1) The name of each person whose logbook that instructor has endorsed for solo flight privileges, and the date of the endorsement; and

\* \* \* \* \*

13. Amend § 61.195 by revising paragraphs (d)(1) introductory text and (d)(2) to read as follows:

§ 61.195 Flight instructor limitations and qualifications.

\* \* \* \* \*

(d) \* \* \*

(1) Student pilot's logbook for solo flight privileges, unless that flight instructor has—

\* \* \* \* \*

(2) Student pilot's logbook for a solo cross-country flight, unless that flight instructor has determined the student's flight preparation, planning, equipment, and proposed procedures are adequate for the proposed flight under the existing conditions and within any

limitations listed in the logbook that the instructor considers necessary for the safety of the flight;

\* \* \* \* \*

## PART 183—REPRESENTATIVES OF THE ADMINISTRATOR

14. The authority citation for part 183 continues to read as follows:

**Authority:** 31 U.S.C. 9701; 49 U.S.C. 106(g), 40113, 44702, 45303.

15. Amend § 183.21 by revising paragraph (c) and removing and reserving paragraph (d) to read as follows:

### § 183.21 Aviation Medical Examiners.

\* \* \* \* \*

(c) Issue or deny medical certificates in accordance with part 67 of this chapter, subject to reconsideration by the Federal Air Surgeon or his or her authorized representatives within the FAA; and

\* \* \* \* \*

Issued in Washington, DC, on November 10, 2010.

**John M. Allen,**

*Director, Flight Standards Service.*

[FR Doc. 2010-29192 Filed 11-18-10; 8:45 am]

BILLING CODE 4910-13-P

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 3

RIN 3038-AC96

### Designation of a Chief Compliance Officer; Required Compliance Policies; and Annual Report of a Futures Commission Merchant, Swap Dealer, or Major Swap Participant

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) regarding the compliance activities of certain registrants. The proposed rules require each futures commission merchant, swap dealer, and major swap participant to designate a chief compliance officer. The proposed rules also prescribe qualifications and duties of the chief compliance officer. Finally, the proposed rules require that the chief compliance officer prepare, certify, and furnish to the Commission an annual

report containing an assessment of the registrant's compliance activities.

**DATES:** Comments must be received on or before January 18, 2011.

**ADDRESSES:** You may submit comments, identified by RIN 3038-AC96 and CCO Designation, by any of the following methods:

- Agency web site, via its Comments Online process at <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

- *Hand Delivery/Courier:* Same as mail above.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in CFTC Regulation 145.9, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

#### FOR FURTHER INFORMATION CONTACT:

Sarah E. Josephson, Associate Director, Division of Clearing and Intermediary Oversight, (202) 418-5684, [sjosephson@cftc.gov](mailto:sjosephson@cftc.gov); or Claire Noakes, Attorney Advisor, Division of Clearing and Intermediary Oversight, (202) 418-5444, [cnoakes@cftc.gov](mailto:cnoakes@cftc.gov); Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

#### SUPPLEMENTARY INFORMATION:

## I. Introduction

On July 21, 2010, President Obama signed the Dodd-Frank Act.<sup>1</sup> Title VII of the Dodd-Frank Act amended the Commodity Exchange Act (CEA)<sup>2</sup> to establish a comprehensive new regulatory framework to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission's oversight.

The Dodd-Frank Act addresses the compliance activities of certain registrants in detail by requiring each futures commission merchant, swap dealer, and major swap participant to designate a chief compliance officer.<sup>3</sup> The Dodd-Frank Act also establishes duties of the chief compliance officer of a swap dealer or major swap participant,<sup>4</sup> and requires that the chief compliance officer of a swap dealer or major swap participant annually prepare, sign, and certify a report that is furnished to the Commission discussing the registrant's compliance policies and activities.<sup>5</sup> The Dodd-Frank Act requires the Commission to prescribe rules regarding the annual report prepared by the chief compliance officer of a swap dealer or major swap participant.<sup>6</sup> With regard to futures commission merchants, the Dodd-Frank Act does not set forth specific duties for the chief compliance officer or establish specific procedures for the preparation and submission of an annual report. Rather, the Dodd-Frank Act states that the chief compliance officer shall "perform such duties and responsibilities as shall be set forth in regulations to be adopted by the Commission."<sup>7</sup>

The Commission has determined to apply the same duties and responsibilities to a chief compliance officer of a futures commission merchant as are required for a chief

<sup>1</sup> See Dodd-Frank Act, Public Law 111-203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at: [http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/hr4173\\_enrolledbill.pdf](http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/hr4173_enrolledbill.pdf).

<sup>2</sup> 7 U.S.C. 1 *et seq.*

<sup>3</sup> 7 U.S.C. 6d(d), 6s(k)(1).

<sup>4</sup> 7 U.S.C. 6s(k)(2).

<sup>5</sup> 7 U.S.C. 6s(k)(3)(A-B).

<sup>6</sup> 7 U.S.C. 6s(k)(3)(A).

<sup>7</sup> 7 U.S.C. 6d(d).