

# Rules and Regulations

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 61

[Docket No. FAA-2006-26661; Amdt. No. 61-127]

RIN 2120-AI86

#### Pilot, Flight Instructor, and Pilot School Certification; Technical Amendment

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The FAA is correcting a final rule published on August 21, 2009 (74 FR 42500). In that rule, the FAA amended its regulations to revise the training, qualification, certification, and operating requirements for pilots, flight instructors, ground instructors, and pilot schools. This document reinstates two paragraphs that were inadvertently removed in one section, and amends an out-of-date cross reference in another section.

**DATES:** Effective April 7, 2011.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Jeffrey Smith, Airmen Certification and Training Branch, AFS-810, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 493-4789; e-mail to [jeffrey.smith@faa.gov](mailto:jeffrey.smith@faa.gov). For legal interpretative questions about this final rule, contact: Anne Moore, AGC-240, Office of Chief Counsel, Regulations Division, Federal Aviation Administration, (202) 267-3073; e-mail to [anne.moore@faa.gov](mailto:anne.moore@faa.gov).

#### SUPPLEMENTARY INFORMATION:

### Background

On August 21, 2009, the FAA published a final rule entitled, “Pilot, Flight Instructor, and Pilot School Certification; Final Rule” (74 FR 42500). That final rule revised the training, qualification, certification, and operating requirements for pilots, flight instructors, ground instructors, and pilot schools. The FAA is now issuing a technical amendment to § 61.57 to reinsert paragraphs (d)(1) and (d)(2) because those paragraphs were inadvertently removed from the final rule. The FAA is also amending an incorrect reference in § 61.65(c).

### Technical Amendment

Section 61.57(d) establishes the requirements for an instrument proficiency check. Prior to issuance of the 2009 final rule, § 61.57(d) contained introductory text as well as paragraph (d)(1), which set forth the aircraft in which an instrument proficiency check must be performed, and paragraph (d)(2), which set forth those persons who are authorized to conduct an instrument proficiency check. In the 2009 final rule, the FAA stated in the amendatory instructions to § 61.57(d) that it was amending paragraph (d) rather than the introductory text to paragraph (d). As a result, paragraphs (d)(1) and (d)(2) were unintentionally removed from the final rule. The FAA is issuing this technical amendment to restore paragraphs (d)(1) and (d)(2) to § 61.57.

The FAA is also correcting a minor error to a reference in paragraph (c) of § 61.65. In the 2009 final rule, the FAA added paragraphs (e) and (f) to this section. A corresponding change to a cross reference in paragraph (c) that would have accounted for these additions was unintentionally omitted. This technical edit will correct that omission.

Because the changes in this technical amendment result in no substantive change, we find good cause exists under 5 U.S.C. 553(d)(3) to make the amendment effective in less than 30 days.

### List of Subjects in 14 CFR Part 61

Aircraft, Airmen, Aviation safety.

### The Amendment

In consideration of the foregoing, the Federal Aviation Administration

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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 § 61.57 by adding paragraphs (d)(1) and (d)(2) to read as follows:

#### § 61.57 Recent flight experience: Pilot in command.

\* \* \* \* \*

(d) \* \* \*

(1) The instrument proficiency check must be—

- (i) In an aircraft that is appropriate to the aircraft category;
- (ii) For other than a glider, in a flight simulator or flight training device that is representative of the aircraft category; or
- (iii) For a glider, in a single-engine airplane or a glider.

(2) The instrument proficiency check must be given by—

- (i) An examiner;
- (ii) A person authorized by the U.S. Armed Forces to conduct instrument flight tests, provided the person being tested is a member of the U.S. Armed Forces;

(iii) A company check pilot who is authorized to conduct instrument flight tests under part 121, 125, or 135 of this chapter or subpart K of part 91 of this chapter, and provided that both the check pilot and the pilot being tested are employees of that operator or fractional ownership program manager, as applicable;

(iv) An authorized instructor; or

(v) A person approved by the Administrator to conduct instrument practical tests.

\* \* \* \* \*

- 3. Amend § 61.65 by revising paragraph (c) introductory text to read as follows:

#### § 61.65 Instrument rating requirements.

\* \* \* \* \*

(c) *Flight proficiency.* A person who applies for an instrument rating must receive and log training from an authorized instructor in an aircraft, or in a flight simulator or flight training

device, in accordance with paragraph (g) of this section, that includes the following areas of operation:

\* \* \* \* \*

Issued in Washington, DC, on April 1, 2011.

**Pamela Hamilton-Powell,**  
Director, Office of Rulemaking.

[FR Doc. 2011-8226 Filed 4-6-11; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9521]

RIN 1545-BG54

#### Reduction of Foreign Tax Credit Limitation Categories Under Section 904(d)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations that provide guidance relating to the reduction of the number of separate foreign tax credit limitation categories under section 904(d) of the Internal Revenue Code. Changes to the applicable law were made by the American Jobs Creation Act of 2004 (AJCA) reducing the number of section 904(d) separate categories from eight to two, effective for taxable years beginning after December 31, 2006. The final regulations provide guidance needed to comply with these changes and affect individuals and corporations claiming foreign tax credits.

**DATES: Effective Date:** These regulations are effective on April 7, 2011.

*Applicability Dates:* For dates of applicability see §§ 1.904-2(i)(3), 1.904-4(n), 1.904-5(o)(3), 1.904-7(g)(6), and 1.904(f)-12(h)(6).

**FOR FURTHER INFORMATION CONTACT:**  
Jeffrey L. Parry, (202) 622-3850 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

On December 21, 2007, a notice of proposed rulemaking by cross-reference to temporary regulations (REG-114126-07) under section 904 of the Code and temporary regulations (TD 9368) (the 2007 temporary regulations) were published in the **Federal Register** (72 FR 72645) and (72 FR 72582), respectively. Corrections to those temporary regulations were published

on March 21, 2008, in the **Federal Register** (73 FR 15063). No written comments were received. A public hearing was not requested and none was held. This Treasury decision adopts the proposed regulation with the changes discussed in this preamble.

#### Explanation of Changes in This Final Rule

##### I. Gain From the Sale of a Partnership Interest

Section 954(c)(4), which was enacted by the AJCA, provides a look-through rule for sales of 25-percent-owned partnerships. Because the definition of passive income in section 904(d)(2)(B) refers to section 954(c), § 1.904-5T(h)(3)(ii) of the 2007 temporary regulations provides that in the case of a sale of a partnership interest by a 25-percent partner, under the principles of section 954(c)(4)(B) the income recognized on such sale is assigned to the separate category for general category income, to the extent that the gain would not be classified as foreign personal holding company income under the section 954(c)(4) look-through rule. The rule has been revised to clarify that the look-through rule applies to a sale by any 25-percent owner of a partnership (and not just controlled foreign corporations that are 25-percent partners). The language of this provision has also been revised to be more consistent with the language of the look-through rule as provided under section 954(c)(4).

##### II. Losses in and Losses With Respect to the Pre-2007 Separate Category for High Withholding Tax Interest

Section 1.904(f)-12T(h) of the 2007 temporary regulations provides transition rules for recapture in a taxable year beginning after December 31, 2006 (post-2006 taxable year) of an overall foreign loss (OFL) or separate limitation loss (SLL) in a pre-2007 separate category (as defined in § 1.904-7T(g)(ii)) that offset U.S. source income or income in another pre-2007 separate category, respectively. Section 1.904(f)-12T(h)(3) provides that to the extent a taxpayer had an OFL or SLL at the end of the taxpayer's last pre-2007 taxable year in the pre-2007 separate category for high withholding tax interest, the allocation of such OFL or SLL to the taxpayer's post-2006 separate categories follows the taxpayer's allocation of excess taxes in the high withholding tax interest loss category for section 904(c) carryover purposes. If there were no excess taxes in the loss category that carried over to post-2006 taxable years, an OFL or SLL in the pre-2007 separate

category for high withholding tax interest is allocated to the post-2006 separate category for passive category income. Similarly, § 1.904(f)-12T(h)(3) provides that where a taxpayer had an SLL in a pre-2007 separate category that offset high withholding tax interest (that is, an SLL with respect to a pre-2007 separate category for high withholding tax interest), the SLL will be recaptured in subsequent taxable years pro rata as income in the post-2006 separate categories for general category income and passive category income based on how the taxpayer allocated excess taxes in the pre-2007 separate category for high withholding tax interest. If no excess taxes in the pre-2007 separate category for high withholding tax interest were carried over to post-2006 taxable years, the SLL will be recaptured in subsequent taxable years as income in the post-2006 separate category for passive category income.

A question was raised as to whether it was appropriate, in the case of a financial services entity that had a loss in, or a loss with respect to, a pre-2007 separate category for high withholding tax interest, and no excess taxes in the loss category were carried over to post-2006 taxable years, that the loss be allocated to the post-2006 separate category for passive category income (in the case of a loss in the pre-2007 separate category for high withholding tax interest) or that the loss be recaptured in subsequent taxable years as income in the post-2006 separate category for passive category income (in the case of a loss with respect to a pre-2007 separate category for high withholding tax interest).

Section 904(d)(2)(C)(i), as amended by the AJCA, provides that financial services income is treated as general category income in the case of a member of a financial services group and any other person predominantly engaged in the active conduct of a banking, insurance, financing or similar business (a financial services entity). Financial services income includes passive income that is received or accrued by any person predominantly engaged in the active conduct of a banking, insurance, financing, or similar business, but does not include specified passive category income. See section 904(d)(2)(D)(i)(II). Accordingly, in post-2006 taxable years, income that otherwise would be treated as passive income (and assigned to the separate category for passive category income) will instead be treated as general category income in the case of a financial services entity.

The IRS and the Treasury Department believe that, in the case of a financial