DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. FAA–1999–5584; Amendment No. 61–106]

RIN 2120–AG77

Alternative Means of Compliance for the Pilot-In-Command Night Takeoff and Landing Recent Flight Experience Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes an alternative means of compliance for the pilot-in-command (PIC) night takeoff and landing recent flight experience requirements. A pilot who operates more than one type of airplane, certificated for more than one pilot flight crewmember, can meet the PIC night takeoff and landing recent flight experience requirements in one of the types of airplanes he/she operates. The pilot would then be considered qualified to perform night flights in the other types of airplanes he/she operates as PIC. In addition, this new alternative means of compliance establishes certain qualifications, aeronautical experience, and additional training. This action is needed to accommodate pilots employed by corporate operators and airplane manufacturers who operate diverse fleets of airplanes that are type certificated for more than one pilot flight crewmember. These operators and manufacturers require their pilots to meet a high level of aeronautical experience and training for qualification as a PIC. This final rule is intended to provide an additional means of compliance with the recent night flight experience requirements while maintaining an equivalent level of safety.

EFFECTIVE DATE: This final rule is effective on April 30, 1999.


SUPPLEMENTARY INFORMATION:

Availability of Final Rules

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339), the Government Printing Office’s (GPO) electronic bulletin board service (telephone (202) 512–1661), or, if applicable, the FAA’s Aviation Rulemaking Advisory Committee bulletin board service (telephone: (800) 322–2722 or (202) 267–5948).

Internet users may reach the FAA’s web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO’s web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting 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. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above Office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA’s jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity. If your organization is a small entity and you have a question, contact your local FAA office. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC 20591, telephone (888) 551–1594. Internet users can find additional information on SBREFA in the “Quick Jump” section of the FAA’s web page at http://www.faa.gov and may send electronic inquiries to the following internet address: 9–AWA–SBREFA@faa.gov.

Background

Statement of the Problem

The FAA has received numerous comments from corporate operators and airplane manufacturers on the requirements for PIC night takeoff and landing recent flight experience. Many of the comments disagreed with the requirement that aircraft of the same category, class, and type (if a type rating is required), be used to perform mandatory night takeoffs and landings. They argue that the requirement to perform required takeoffs and landings in an aircraft of the same type (if a type rating is required) for all types of aircraft in the same category and class is not cost effective and provides an unnecessary burden on their pilots. The commenters requested that an alternative means of compliance for this requirement be granted for their pilots, taking into consideration the aircraft their pilots operate, their pilots’ high level of aeronautical experience, and the additional training required of their pilots.

History

On April 4, 1997, the FAA amended 14 CFR part 61 (62 FR 16220), which became effective on August 4, 1997. In this amendment, 61.57(b) (14 CFR 61.57(b)) was revised to require that PIC night takeoffs and landing recent flight experience requirements be performed in not only the same category and class of aircraft but also the same type (if a type rating is required). Since the issuance of this amendment, the FAA has received many comments from corporate operators, airplane manufacturers, and the National Business Aircraft Association, Inc. Many of these commenters argue that they were not given adequate notice to the above amendment. While adequate notice and comment period was provided, the amendment was part of a large rulemaking project and easily could have been overlooked by the commenters.

The commenters state that requiring PIC night takeoff and landing recent flight experience to be in the same type of airplane (if a type rating is required), beyond the same category and class, is a burdensome requirement for their pilots. They argue that their pilots are very experienced and maintain type ratings for several models of airplanes within the same category and class. Furthermore, differences between types of turbojet aircraft are minimal, and the requirement that their pilots meet PIC night recent flight experience requirements in each type is an economic burden. They argue that to do touch and goes in turbojet aircraft is very costly, and as such, that maintaining night takeoff and landing currency is one type, category and class of aircraft should be sufficient for all types of turbojet aircraft. Additionally, they argue that during the summer months, when there are few hours of darkness, it is very difficult for their pilots to meet the night takeoff and
landing requirement in all the different types, but same category and class of aircraft they operate. finally, the commenters argue that the current requirement to perform night takeoffs and landings in all the types of turbojet aircraft they operate has the potential of increasing air traffic congestion and noise pollution.

As a result, these corporate operators and airplane manufacturers have asked the FAA to provide an alternative means of compliance to the PIC night takeoff and landing recent flight experience requirements for their pilots. They believe that their pilots should be allowed to meet the PIC night takeoff and landing recent flight experience requirements for all types of aircraft in the same category and class, once they have met this requirement in one type of aircraft in the same category and class.

On February 3, 1999, the FAA issued a grant of exemption to Gulfstream Aerospace Corporation (Gulfstream) from the PIC night takeoff and landing recent flight experience requirements based on the arguments described above. This grant of exemption gave Gulfstream pilots an alternative means of compliance to the night currency requirements, based on an earlier grant of exemption to the Boeing Commercial Airplane Group. After issuing this grant of exemption, the FAA received similar requests from other corporate operators and airplane manufacturers, which were denied. Upon further review, the FAA has determined that this issue needs to be resolved through rulemaking and not through additional grants of exemption.

Accordingly, the FAA has determined that the alternative means of compliance for the PIC night takeoff and landing recent flight experience requirements granted to Gulfstream’s PICs, also applies to other PICs who operate various types of airplanes requiring more than one pilot flight crewmember by the airplane’s type certificate.

Alternative Means of Compliance

The final rule amends § 61.57 by adding a new paragraph (e)(3), which establishes an alternative means of compliance to the PIC night takeoff and landing recent flight experience requirements. This final rule neither less nor adds requirements to the present PIC night takeoff and landing currency requirement of § 61.57(b), but merely provides another alternative means for remaining current in night takeoffs and landings.

For years the FAA has permitted pilots who are employed by a certificate holder under 14 CFR parts 121, 125 or 135 an alternative means of compliance for the night takeoff and landing recent flight experience requirements of § 61.57(b). As previously mentioned, the FAA has issued grants of exemption that permit pilots employed by some corporate operators or as test pilots for some airplane manufacturers, an alternative means of compliance from the night takeoff and landing currency requirements of § 61.57(b).

In this final rule, a PIC who operates more than one type of an airplane, that is type certificated for more than one pilot flight crewmember, may meet the PIC night takeoff and landing recent flight experience requirements under the current requirements of § 61.57(b) or under this alternative. This alternative states that a pilot, who operates more than one type of airplane that is type certificated for more than one pilot flight crewmember, meets the PIC night takeoff and landing recent flight experience requirements for all of the different types of airplanes provided the pilot—

(i) Has logged at least 1500 hours total time as a pilot; and
(ii) Has accomplished at least 15 hours of flight time in the type of airplane that the pilot seeks to operate under this alternative within the preceding 90 days prior to the operation of that airplane; and

(iii) Has accomplished—

(A) At least three takeoffs and three landings to a full stop, during the period beginning 1 hour after sunset and ending 1 hour before sunrise as the sole manipulator of the flight controls in at least one of the types of airplanes that the pilot seeks to operate under this alternative, within the preceding 90 days prior to the operation of any of the types of airplanes that the pilot seeks to operate under this alternative; or

(B) Completion of an approved training program under part 142 of this chapter within the preceding 12 calendar months prior to the month of the flight, which requires the performance of at least 6 takeoffs and 6 landings to a full stop as the sole manipulator of the controls in a flight simulator that is representative of at least one of the types of airplanes that the pilot seeks to operate under this alternative, and the flight simulator's visual system was adjusted to represent the period beginning 1 hour after sunset and ending 1 hour before sunrise.

The FAA has determined that this final rule will apply primarily to pilots employed by corporate operators and airplane manufacturers of turbine powered and large airplanes that require more than one pilot crewmember by the airplane’s type certification requirements. For example, business jets such as some CE-500 series jets, Learjets, operators of DC-3’s, Martin-404’s, DC-6’s, DC-7’s, and various other part 25 transport category airplanes.

Good Cause for Immediate Adoption

Sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedures Act (APA) (5 U.S.C. Sections 553(b)(3)(B) and 553(d)(3)) authorize agencies to dispense with notice and opportunity for comment when they find “good cause” to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Section 553(d)(3) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day delayed effective date requirement in section 553.

The FAA finds that notice and public comment to this final rule are impracticable, unnecessary, and contrary to the public interest. The provisions in this final rule provide an alternative means of compliance with the PIC night takeoff and landing recent flight experience requirements. This alternative means of compliance is applicable only to those PICs who fly two or more types of airplanes that require more than one pilot flight crewmember by the airplane’s type certificate. However, these PICs still have the option to either meet the existing PIC night takeoff and landing recent flight experience requirements of § 61.57(b) or they can choose to comply with this alternative PIC night takeoff and landing provision. The FAA has determined that the addition of this alternative means of compliance will not have an adverse effect on PIC night takeoffs and landing proficiency. Furthermore, the requirements for the alternative means of compliance for PIC night takeoff and landing recency will not have an adverse effect on safety since they are equivalent in content and substance to the existing PIC night takeoff and landing recent flight experience requirements listed in § 61.57(b). The FAA has determined that notice and public comment are unnecessary since this rule is in the public interest and has no safety implications.

In addition, the FAA has determined that compliance with this alternative means of compliance for PIC night takeoff and landing
recent flight experience requirements is
eeded immediately, so as to relieve a
burdensome and costly requirement for
corporate operators, airplane
manufacturers, and the pilots they
employ. As discussed earlier, the FAA
gave granted exemptions previously,
providing an alternative means of
compliance for PIC night takeoff and
landing recent flight experience
requirements. These petitions for
exemption were published in the
Federal Register, and received no
comments. Therefore, the FAA has
determined notice and comment on this
amendment to be unnecessary.

Paperwork Reduction Act Approval

Information collection requirements
in the amendments to § 61.57 previously
have been approved by the Office of
Management and Budget (OMB) under
the provisions of the Paperwork
Reduction Act of 1995 (44 U.S.C.
3507(d)), and have been assigned OMB
Control Number 2120-0021.

Compatibility With ICAO Standards

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
determined that there are no ICAO
Standards and Recommended Practices
that correspond to these proposed
regulations.

Economic Summary

Four principal requirements pertain
to the economic impacts of changes to
the Federal Regulations. First, Executive
Order 12866 directs Federal agencies to
promulgate new regulations or modify
existing regulations after consideration
of the expected benefits to society and
the expected costs. The order also
requires Federal agencies to assess
whether a final rule is considered a
"significant regulatory action." Second,
the Regulatory Flexibility Act of 1980
requires agencies to analyze the
economic impact of regulatory changes
on small entities. Third, the Office of
Management and Budget directs
agencies to assess the effect of
regulatory changes on international
trade. Finally, Public Law 194-4,
Department of Transportation
Appropriations Act (November 15, 1995),
requires Federal agencies to
assess the impact of any Federal
mandates on State, Local, Tribal
governments, and the private sector.
In conducting these analyses, the FAA
determined that this rule will be
cost beneficial, and is not "significant"
as defined under section 3(f) of
Executive Order 12866 and Department of
Transportation (DOT) policies and
procedures (44 FR 11034, February 26,
1979). In addition, under the Regulatory
Flexibility Determination, the FAA
certifies that this proposal will not have
a significant impact on a substantial
number of small entities. Furthermore,
this proposal will not impose restraints
on international trade. Finally, the FAA
determined that the proposal will
not impose a Federal mandate on State,
Local, or Tribal governments, or the
private sector of $100 million per year.
These analyses are summarized below.

Executive Order 12866 and DOT's
Policies and Procedures

Under Executive Order 12866, each
Federal agency shall assess both the
costs and the benefits of final
regulations while recognizing that some
costs and benefits are difficult to
 quantify. A final rule is promulgated
only upon a reasoned determination
that the benefits of the final rule justify
 costs.

The FAA’s analysis of this final rule
indicates that this amendment to part 61
will generally have a beneficial impact
to corporate operators and airplane
manufacturers that operate several
different types of airplanes that are type
certified for more than one pilot
flight crewmember and the pilots they
employ. This final rule provides an
alternative means of compliance for
PICs to maintain night takeoff and
landing currency. This alternative
means for PICs to maintain their night
takeoff and landing currency in all of
the types of airplanes they operate will
be permitted, provided the pilot meets
the following:
(i) Holds at least a valid commercial
pilot certificate with the appropriate
type rating for each airplane that the
pilot seeks to operate under this
alternative;
(ii) Has logged at least 1,500 hours
total time as a pilot;
(iii) Has accomplished at least 15
hours of flight time in the type
airplane that the pilot seeks to
operate under this alternative within
the preceding 90 days prior to the
operation of that airplane; and
(iv) Has accomplished at least—
(A) three takeoffs and three landings
to a full stop, during the period
beginning 1 hour after sunset and
ending 1 hour before sunrise as the
sole manipulator of the flight controls in
at least one of the types of airplanes that
the pilot seeks to operate under this
alternative, within the preceding 90
days prior to the operation of any of the
types of airplanes that the pilot seeks to
operate under this alternative; or
(B) completion of an approved
training program under part 142 of this
chapter within the preceding 12
calendar months prior to the month of
the flight, which requires the
performance or at least six takeoffs
and six landings to a full stop as the sole
manipulator of the controls in a flight
simulator that is representative of at
least one of the types of airplanes that
the pilot seeks to operate under this
alternative, and its visual system is
adjusted to represent the period
beginning 1 hour after sunset and
ending 1 hour before sunrise.

One of the major benefits to
permitting this alternative means of
compliance is that it will permit
operators with multiple airplanes, that
are type certificated for more than one
pilot flight crewmember, to save on the
costs of requiring their pilots to remain
current in the pilot-in-command night
takeoff and landing recent flight
experience requirements for all of
the operator’s different types of airplanes.
This benefit will provide cost savings on
personnel, fuel, and maintenance on
items such as wheel brakes, thrust
reversers, and tires.

Additional benefits of this final rule
include the following: the reduction in
pilot and controller workload, which
should reduce the chances for
procedural errors; the reduction in
training accidents and incidents; the
reduction in noise for the surrounding
communities; and reduction in air
pollution; and the reduction in air
traffic congestion and training costs.
Finally, the FAA has determined that
this alternative means of compliance
will not diminish safety in any manner.
Pilots who are eligible to take advantage
of this alternative means of compliance
must meet higher commercial
experience requirements and other
additional currency requirements.

The FAA has determined that there
are no costs associated with complying
with these alternative requirements
since PICs will have the option to meet
either the existing night takeoff and
landing requirements in § 61.57(b) or
they may comply with this alternative.
The FAA has concluded that this final
rule is cost beneficial.

Final Regulatory Flexibility
Determination

The Regulatory Flexibility Act of 1980
(the Act) establishes "as principle of
regulatory issuance that agencies shall
endeavor, consistent with the objective
of under regulations and of the public
statutes, to fit regulatory and information
requirements to the scale of the
business, organizations, and governmental jurisdictions subject to regulation. To achieve that and to explain the rationale for their actions, the Act 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 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 (RFA) as described in the Act. If an agency determines, however, that a 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 an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the required review of this final rule and determined that it will not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities because the final rule imposes no additional cost on small entities. Small entities and their PICs will also benefit from this final rule, because they also have the choice to either comply with the existing PIC night takeoff and landing currency of paragraph (b) of § 61.57 or they can choose to operate under this new alternative means of compliance for meeting the night takeoffs and landings currency.

International Trade Impact Statement

The FAA has determined that the final rule will neither affect the sale of aviation products and services in the United States or the sale of U.S. products and services in foreign countries.

Federalism Implications

The regulation herein 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. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in an agency final rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

Section 204(a) of the Reform Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local and tribal governments on a proposed “significant intergovernmental mandate.” A “significant intergovernmental mandate” under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local and tribal governments in the aggregate, of $100 million (adjusted annually for inflation) in any one year.

Section 203 of the Reform Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals. This rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year, therefore the requirements of the Reform Act do not apply.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(i), regulations, standards and exemptions (excluding those, which if implemented may cause a significant impact on the human environment) qualify for a categorical exclusion. The FAA proposes that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 61

Aircraft, Airmen, Recreation and recreation areas, reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 61 of Chapter I of Title 14, Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

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


2. Section 61.57 is amended by adding a new paragraph (e)(3) to read as follows:

§ 61.57 Recent flight experience: Pilot in command.

(e) * * * * *

(3) Paragraph (b) of this section does not apply to a pilot in command who operates more than one type of airplane that is type certificated for more than one pilot flight crewmember, provided the pilot—

(i) Holds at least a valid commercial pilot certificate with the appropriate type rating for each airplane that the pilot seeks to operate under this alternative;

(ii) Has logged at least 1500 hours total time as a pilot;

(iii) Has accomplished at least 15 hours of flight time in the type of airplane that the pilot seeks to operate under this alternative within the preceding 90 days prior to the operation of that airplane; and

(iv) Has accomplished—

(A) At least three takeoffs and three landings to a full stop, during the period beginning 1 hour after sunset and ending 1 hour before sunrise as the sole manipulator of the flight controls in at least one of the types of airplanes that the pilot seeks to operate under this alternative, within the preceding 90 days prior to the operation of any of the types of airplanes that the pilot seeks to operate under this alternative; or

(B) Completion of an approved training program under part 142 of this chapter within the preceding 12 calendar months prior to the month of
the flight, which requires the
performance of at least 6 takeoffs and 6
landings to a full stop as the sole
manipulator of the controls in a flight
simulator that is representative of at
least one of the types of airplanes that
the pilot seeks to operate under this
alternative, and the flight simulator’s
visual system was adjusted to represent
the period beginning 1 hour after sunset
and ending 1 hour before sunrise.

Issued in Washington, DC, on April 22,
1999.

Jane F. Garvey,
Administrator.

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