

## 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.

**FOR FURTHER INFORMATION CONTACT:** John Lynch, Certification Branch, AFS-840, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

**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 official. 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 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 fewer 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 has 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 revises § 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 lessens 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) 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.

The FAA anticipates 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 certain notice procedures for rules 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 for good cause 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 PIC night takeoff and landing

recent flight experience requirements is needed 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 has 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 has 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 has 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 certificated 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 take off 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 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 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 in 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 the rule and of applicable 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(j), 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 of part 61 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45303.

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 an 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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