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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA-2018-0926; Notice No. 18-02]

RIN 2120-AL09

Removal of the Date Restriction for Flight Training in Experimental Light Sport Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration is proposing to revise its rules concerning the operation of experimental light sport aircraft. The current regulations prohibited the use of these aircraft for flight training for compensation or hire after January 31, 2010. Allowing the use of experimental light sport aircraft for compensation or hire for the purpose of flight training would increase safety by allowing greater access to aircraft that can be used for light sport aircraft and ultralight training. The proposed rule would add language that permits training in experimental light sport aircraft for compensation or hire for the purpose of flight training through existing deviation authority.

DATES: Send comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send comments identified by docket number FAA-2018-0926 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 (DOT), 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.

Privacy: In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. 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: Bart Angle, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267-0868; e-mail bartholemew.angle@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This rulemaking would amend Title 14 Code of Federal Regulations (CFR) § 91.319(e)(2) to add language that permits training in experimental light sport aircraft (ELSA) for compensation or hire through existing deviation authority provided in paragraph (h) of that section. The FAA proposes this change to allow for increased availability of flight training aircraft with similar performance and handling characteristics to light sport aircraft and ultralights. This would be accomplished through the issuance of a letter of deviation authority (LODA). LODAs provide regulatory relief to enable certain operations to be conducted in the interest of safety under specific conditions and limitations.

II. Authority for this Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Specifically, Subtitle I, Section 106 authorizes the FAA Administrator to promulgate regulations.

Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. Subtitle VII, Part A, Subpart iii, Section 40101 and 44701 further describe the FAA Administrator's authority. Section 40101 requires that the FAA regulate air commerce and other operations, including civil operations, in a way that best promotes safety and efficiency. Section 44701 affirmatively requires the FAA promote safe flight of civil aircraft in air commerce by regulating aircraft and airmen. This regulation is within the scope of that authority because it would expand the training opportunities for experimental light sport aircraft operators and ultralight aircraft operators and therefore enhance the safety of these operations.

III. Background

Effective September 1, 2004, the FAA defined¹ characteristics for a category of simple, small, lightweight, low-performance aircraft; identifying them as light-sport aircraft.² Along with defining this group of aircraft, the FAA created a new special airworthiness certificate in the light-sport category (special light sport aircraft – SLSA) in § 21.190 and added light sport aircraft to the existing special airworthiness certificate in the experimental category (experimental light sport aircraft – ELSA) in § 21.191(i).³ SLSA include aircraft manufactured according to an industry consensus standard rather than a type certificate.⁴ ELSA regulations include provisions for (1) a temporary allowance for migration of so-called “fat ultralights” that did not conform to 14 CFR Part 103,⁵ (2) kit-built versions of SLSA aircraft, and (3) aircraft previously issued a special airworthiness certificate in the light sport category under § 21.190.

Prior to the 2004 light sport rule, the FAA had granted exemptions to permit “fat ultralights” – which did not meet the part 103 requirements – to be used for compensation or hire for the purpose of flight training. Although allowing for greater access to flight

¹ 14 CFR 1.1.

² 69 FR 44772, July 27, 2004 (Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft)

³ 14 CFR 21.190 contains requirements for the issuance of a special airworthiness certificate for light-sport category aircraft.

⁴ 14 CFR 21.190(b).

⁵ 14 CFR Part 103 defines and establishes rules governing the operation of ultralight vehicles in the United States. There are two categories of ultralight vehicles: powered and unpowered. To be considered an ultralight vehicle, a hang glider must weigh less than 155 pounds; while a powered vehicle must weigh less than 254 pounds; is limited to 5 U.S. gallons of fuel; must have a maximum speed of not more than 55 knots; and must have a power-off stall speed of not more than 24 knots. Both powered and unpowered ultralight vehicles are limited to a single occupant. Those vehicles which exceed the above criteria will be considered aircraft for purposes of airworthiness certification and registration, and their operators will be subject to the same certification requirements as are aircraft operators. See 47 FR 38770, Sept. 2, 1982 (Ultralight Vehicles; Operating Requirements).

training was seen by the FAA as having a positive effect on safety, some of the exemptions were used for operations other than for the intended purpose of flight training.

With the 2004 light sport rule, the FAA eliminated the need for the ultralight flight training exemptions by allowing instructors to conduct flight training in these aircraft until January 31, 2010. As stated in the final rule, a significant purpose of the rule was to certificate those two-seat “fat-ultralights” previously operated under part 103 training exemptions and those two-seat and single-seat unregistered “fat-ultralight” aircraft operating outside of the regulations.

The FAA anticipated that the newly manufactured SLSA would replace the former “fat ultralights” (newly certificated as ELSA) such that flight training in ELSA would no longer be necessary. The FAA, knowing that the manufacture of the new SLSA aircraft would take time, used § 91.319(e) to allow for an extension of the time period to permit the use of properly registered “transitioning” aircraft with ELSA airworthiness certificates to be used for flight training by the same owner until January 31, 2010. After that date, those ELSA aircraft would no longer be permitted to be used for flight training for compensation or hire and no further ultralight flight training exemptions would be granted.

The FAA estimated that 60 months would be an adequate amount of time for the new SLSA to enter service to replace the ELSA and meet flight training demands. The FAA also expected that the 60 months would provide the owners of the transitioning ELSA with additional time in which to purchase SLSA to provide flight instruction under the new rule, thereby delaying replacement costs. In addition, the FAA believed the

action would further expand the growth of the industry as a whole. However, the anticipated arrival of the new SLSA has not materialized in the way that the FAA had projected in the final rule, especially for two-seat aircraft used for light sport and ultralight training. There are some two-seat light sport low mass/high drag trainers with SLSA airworthiness certificates available on the market for use in flight training, but not in numbers that provide for widespread availability for use in training.

Experimental light sport aircraft are good training aircraft for light sport aircraft and ultralight vehicles because they are typically low-mass/high-drag aircraft and have a second seat, which can be occupied by an FAA certificated flight instructor. The use of ELSA as a training option for light sport aircraft and ultralights provides an avenue for structured flight instruction from an FAA certificated flight instructor. While the FAA does not see a risk-based need to expand the training requirements for light sport aircraft or ultralights, it does not want to impede individuals who wish to take advantage of flight training that is relevant to the type of aircraft they operate. Additionally, the FAA would like to facilitate the availability of training aircraft for new light sport pilots or existing pilots who are transitioning to a low-mass/high-drag aircraft from conventional aircraft.

IV. Discussion of the Proposal

Recognizing the currently limited supply of adequate aircraft for the flight training of light sport and ultralight operators, the FAA proposes to amend § 91.319 (e)(2) to add language that permits training in experimental light sport aircraft for compensation or hire through existing deviation authority (LODA) provided in paragraph (h) of that section.

To ensure these aircraft are used solely for the purpose of flight training and to better control and monitor the use of ELSA for flight training, the FAA proposes to

require a LODA for operators who intend to conduct flight training compensation or hire using ELSA. The 2004 Light Sport Final Rule created the LODA process to allow training for compensation or hire using certain categories of experimental aircraft. However, this rule set a January 31, 2010 time limit (§ 91.319(e)(2)) on the use of a LODA for experimental light sport aircraft (ELSA). Prior to the 2004 Light Sport Final Rule, the airworthiness category of experimental light sport aircraft did not exist (see Table 1 of the NPRM to the 2004 Light Sport Rule (67 FR 5369)). These aircraft were unregistered two-seat ultralight vehicles that operated through exemptions to conduct training for compensation or hire. This is described, in detail, in Section III of this NPRM. This is also described in the 2004 Light Sport Final Rule (69 FR 44853).

The training LODAs themselves were never a safety problem. Rather, the problem was the misuse of exemptions prior to the 2004 Light Sport rule that created the LODA process. The exemptions applied to a broad class and made it impossible for the FAA to ensure their proper use by individual members of the class. The 2004 Light Sport Final Rule (69 FR 44777) highlights this problem in the second paragraph of page 44777. The LODA process solves this problem by being issued to a single person through the FAA's Web Based Operations Safety System (WebOPSS). This is the same system used to issue specification for air carrier operations specifications and also allows compliance monitoring and tracking. These same functionalities will help the FAA ensure proper use of LODAs by trainers using ELSAs, making the current time limitation unnecessary.

If adopted, the proposed rule would allow for an owner, operator, or training provider to apply for and receive a training LODA, which would allow for the use of experimental light sport aircraft for flight training for compensation or hire. The proposed

rule would also allow a flight instructor to receive compensation for providing flight instruction in an experimental light sport aircraft in accordance with the conditions and limitations of a LODA.

The FAA would issue a LODA on the basis of the eligibility of the aircraft and its maintenance requirements, the applicant,⁶ the instructor, and the type of training desired. LODA holders would be required to own or lease the aircraft and would be ultimately responsible for ensuring that the aircraft, training, maintenance and instructor(s) meet the requirements specified by the LODA. The aircraft would be required to have completed its initial flight testing, have been granted an experimental airworthiness certificate and be maintained in accordance with either an FAA approved inspection program, in accordance with the provisions of § 91.409(b) or § 91.409(e), (f)(4), and (g). The aircraft must have been inspected by an FAA-certificated mechanic with airframe and powerplant ratings, a certified repairman with the appropriate qualifications for the subject aircraft, or a certified repair station in accordance with the requirements of § 91.319(g). Specific training purposes and programs must be submitted and accepted by the FAA for the issuance of a LODA.

V. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct 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 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory

⁶ *Applicant*. An owner, operator, or training provider who is applying to be a LODA holder.

changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the 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 (Public Law 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 rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this rule. The reasoning for this determination follows:

This proposed rule removes a date restriction imposed by the 2004 Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft Final Rule which prohibited the use of experimental light sport aircraft (ELSA) for compensation or hire flight training after January 31, 2010. Removing the date restriction allows owners, operators or training providers of ELSA that were eligible to conduct flight training prior to the cutoff date to do so again.

Currently, there are some two-seat aircraft that perform and handle similar to an ultralight, certificated as special light sport aircraft (SLSA) available to conduct training, but they are not available in numbers that provide for widespread accessibility. With this rule in effect, ELSA pilots and potential pilots can choose to take flight training in an ELSA, which had been prohibited after 2010. Allowing the use of ELSA would offset the lack of availability of SLSA versions of these aircraft.

An internet search of two separate flight schools offering instruction in SLSA shows that one company provides training for \$195 per hour,⁷ while the other offered training at a rate of \$175 per hour.⁸ These rates are inclusive of the flight instructor and rental of the aircraft.⁹ FAA Aerospace Forecasts for FY 2018-2038 estimated there were 27,865 ELSA compared to 2,585 SLSA at the end of 2017.¹⁰ Although it is unknown how many ELSA will become available for training, it is anticipated that the training cost will be in the same range as training in SLSA. The increase in the supply of aircraft available for training may reduce the cost of training in both aircraft types depending on the training demand by new and existing light sport pilots.

Federal Aviation Regulations do not require an airmen certificate or a medical certificate for the operation of ultralight vehicles. Additionally, there is no practical test or knowledge exam, and flight training or ground instruction are not mandatory. Thus, individuals that choose to take flight training in ELSA or SLSA are voluntarily doing so because they have determined the benefits from the training would exceed its costs.

⁷ <http://sportpilottraining.sportaviationcenter.com/pilot-training-cost/lisa-trike/http://trikeschool.com/faqs.ydev>. Accessed June 22, 2017.

⁸ <http://beachflight.com/pricing.html>

⁹ <http://sportpilottraining.sportaviationcenter.com/pilot-training-cost/lisa-trike/http://trikeschool.com/faqs.ydev>. Accessed June 22, 2017.

¹⁰ https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/Appendix_C_Forecast_Tables.pdf (Table 28). Accessed May 25, 2018.

The FAA has, therefore, determined that this rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866 and is not “significant” as defined in DOT’s Regulatory Policies and Procedures. The FAA requests comments on this determination. Cost impacts will be small, and the rule poses no novel legal or policy issues.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” 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 rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

While the proposed rule would likely impact a substantial number of small entities, it will have a minimal economic impact. The proposed rule enables the use of ELSA for compensation or hire for the purpose of conducting flight training. Trainees can then voluntarily hire a flight training instructor who uses an ELSA. As the rule would increase the number of acceptable training aircraft, the rule would not impose costs.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 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 rule and determined that the rule responds to a domestic safety objective and is not considered an unnecessary obstacle to trade.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) 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 (in 1995 dollars) 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 \$155 million in lieu of \$100 million. This rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. 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 Office of Management and Budget (OMB) control number.

The FAA has determined that there would be no new information collection associated with the proposed requirement for an applicant to submit a request for deviation authority to obtain relief from the provisions of section 91.319(a) for the purposes of conducting flight training. Approval to collect such information previously was 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 was assigned OMB Control Number 2120-0690.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

G. Environmental Analysis

FAA Order 1050.1F 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 rulemaking action qualifies for the categorical exclusion identified in paragraph 5-6.6 and involves no extraordinary circumstances.

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal 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.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a “significant energy action” under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, International Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

D. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This proposed rule is expected to be an EO 13771 deregulatory action with de minimis cost savings.

VII. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency 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, commenters should

send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, 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 agency may change this proposal in light of the comments it receives.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from 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 or
3. Accessing the Government Publishing Office's web page at <http://www.gpo.gov/fdsys/>.

Copies may also be obtained 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) 267-9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation Safety, Noise control, Reporting and recordkeeping requirements.

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 91-- GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–56507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

2. Amend § 91.319 by revising paragraph (e)(2) and the introductory text of paragraph (h) to read as follows:

§ 91.319 Aircraft having experimental certificates: Operating limitations.

* * * * *

(e) * * *

(2) Conduct flight training in an aircraft in accordance with paragraph (h) of this section.

* * * * *

(h) The FAA may issue deviation authority providing relief from the provisions of paragraphs (a) and (e)(2) of this section for the purpose of conducting flight training. The FAA will issue this deviation authority as a letter of deviation authority.

* * * * *

Issued under authority provided by 49 U.S.C. 106(f), 106(g), 40101(d), 44701(a), and 44703 in Washington, DC, on October 18, 2018.

Michael J. Zenkovich
Deputy Executive Director, Flight Standards Service

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