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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61 and 91

[Docket No. FAA-1351; Notice No. 23-09]

RIN 2120–AL61

Public Aircraft Logging of Flight Time, Training in Certain Aircraft Holding Special Airworthiness Certificates, and Flight Instructor Privileges

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: As directed by the FAA Reauthorization Act of 2018, the FAA proposes to allow pilots conducting public aircraft operations (PAO) to credit their flight time towards FAA civil regulatory requirements. Additionally, consistent with the James M. Inhofe National Defense Authorization Act for 2023 (2023 NDAA), the FAA proposes to amend the operating rules for experimental aircraft to permit certain flight training, testing, and checking in these aircraft without a letter of deviation authority (LODA). The FAA proposes to extend the same relief to certain flight training, testing, and checking in limited category, primary category, and experimental light sport aircraft. The FAA also proposes miscellaneous amendments related to recent flight experience, flight instructor privileges, flight training in certain aircraft holding special airworthiness certificates, and the related prohibitions on conducting these activities for compensation or hire. These proposed changes will clarify existing regulatory requirements, align the regulations with current industry practice, and ensure compliance with the FAA Reauthorization Act of 2018 and the 2023 NDAA.

DATES: Send comments on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: Send comments identified by docket number FAA-2023-1351 using any of the following methods:

- Federal eRulemaking Portal: Go to 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 U.S.C. 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 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: Jabari Raphael, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800

Independence Avenue, SW, Washington, DC 20591; (202) 267-1088; e-mail Jabari.Raphael@faa.gov.

SUPPLEMENTARY INFORMATION:

List of Abbreviations and Acronyms Frequently Used in This Document

ATC	Air Traffic Control
ELSA	Experimental Light-Sport Aircraft
ICAO	International Civil Aviation Organization
IFR	Instrument Flight Rules
LODA	Letter of Deviation Authority
NAS	National Airspace System
NPRM	Notice of Proposed Rulemaking
NTSB	National Transportation Safety Board
PAO	Public Aircraft Operation
PIC	Pilot-in-command
SIC	Second-in-command
SLSA	Special Light-Sport Aircraft
VFR	Visual Flight Rules

TABLE OF CONTENTS

I. Executive Summary

As directed by section 517 of the FAA Reauthorization Act of 2018 (Public Law 115-254), the FAA proposes to allow pilots conducting public aircraft operations (PAO) under Title 49 of the United States Code (U.S.C.) 40102(a)(41) and 40125 to credit their flight time towards FAA civil regulatory requirements. While section 517 requires the FAA to issue regulations to

allow the logging of flight time in aircraft used in PAO under direct operational control of forestry and fire protection agencies, the FAA proposes to more broadly consider all PAO for flight time. Moreover, the FAA proposes to expand the regulatory framework to allow pilots serving in PAO as second in command to log flight time, under certain circumstances. Enabling pilots to log SIC time while operating a PAO encourages the use of a second pilot where one may not be required and increases overall safety in the NAS.

The FAA also proposes to clarify recent flight experience requirements and the authorized flight training activities under part 61. The FAA proposes to add § 61.57(e)(5) to codify an exception that, in certain circumstances, would enable a person receiving flight training to act as PIC, even if that person does not meet the recent flight experience requirements for carrying passengers under § 61.57(a) or (b). Additionally, the FAA proposes to add "maintaining or improving skills for certificated pilots" to the list of flight instructor privileges found in §§ 61.193(a)(7) and 61.413(a)(6) to clarify that flight instructors are authorized to conduct certain specialized and elective training.

The proposed rule would also amend part 91 operating rules to clarify prohibited operations and create limited exceptions to the general prohibition on carriage of persons for compensation or hire for flight training, testing, and checking in aircraft holding certain special airworthiness certificates. Currently, part 91 regulations broadly prohibit a person from operating certain aircraft with special airworthiness certificates (i.e., limited category, experimental, or primary category aircraft)[1] carrying persons and property for compensation or hire. These part 91 regulations use broad terms that the FAA has defined either in regulation (i.e., operate, person) or through interpretation and guidance (i.e., compensation). The broad language in these

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[1] Section 21.175(b) identifies special airworthiness certificates as primary, restricted, limited, light-sport, and provisional airworthiness certificates, special flight permits, and experimental certificates.

regulations was the subject of recent litigation[2] that identified a discrepancy between the plain language of the regulation and the FAA's longstanding application of the regulation to certain flight training activity. Therefore, the FAA initiated this rulemaking to remove the requirement for owners (and certain persons affiliated with owners) to obtain a LODA to accomplish flight training in their aircraft and to clarify the general prohibition on operating aircraft with certain special airworthiness certificates while carrying persons or property for compensation or hire.

During the development of this NPRM, President Joseph R. Biden, Jr. signed into law the James M. Inhofe National Defense Authorization Act for 2023 (2023 NDAA), which included a self-implementing provision that amended the operating rules to permit certain flight training, testing, and checking in experimental aircraft without a letter of deviation authority (LODA). The FAA proposes to extend the same relief to certain flight training, testing, and checking in limited category, primary category, and experimental light sport aircraft. The FAA anticipates that the proposed changes will provide greater access to specialized training in aircraft with special airworthiness certificates.

The FAA analyzed the costs and benefits for the provisions related to PAO and the provisions related to training, testing, and checking in certain aircraft with special airworthiness certificates separately. The provisions related to PAO impose no new costs and the FAA expects the proposal will reduce the costs for pilots conducting PAO to maintain their civil certificates and ratings.[3] The provisions related to training, testing and checking impose approximately $100,000 in total one-time costs (undiscounted) over a period of two years. These costs stem

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[2] Warbird Adventures, Inc. v. Fed. Aviation Admin., Petition for Review from an Emergency Cease and Desist Order Issued by the Federal Aviation Administration on July 28, 2020, Doc. No. 1854466 (D.C. Cir. 2020).

[3] The FAA does not maintain counts of pilots who fly PAO for federal, state, and local governments and there is insufficient data for the FAA to estimate the number of pilots affected by this proposal. See "How to Become a Government Pilot" in Flying Magazine by James Wynbrandt, Dec. 13, 2017. Available at: https://www.flyingmag.com/how-to-become-government-pilot/ Last accessed Jul. 22, 2022.

from the requirement for current LODA holders who broadly offer certain aircraft with special airworthiness certificates for training to reapply within two years of the effective date. However, the FAA expects the cost savings from the elimination of LODA requirements for pilots receiving training in their own aircraft, the streamlined regulatory framework, and the safety benefits from greater access to specialized training in aircraft with special airworthiness certificates to exceed the initial costs. Overall, the FAA concluded that this proposal would enhance safety with minimal impact on cost.

II. Authority for the Rulemaking

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

The FAA is proposing this rulemaking under the authority described in Subtitle VII, Part A, Subpart iii, section 44701, General Requirements; section 44702, Issuance of Certificates; and section 44703, Airman Certificates. Under these sections, the FAA prescribes regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. The FAA is also authorized to issue certificates, including airman certificates, and medical certificates, to qualified individuals. This rulemaking proposal is within the scope of that authority.

Furthermore, section 517 of Public Law 115-254, Public Aircraft Eligible for Logging Flight Times, directs the Administrator to revise 14 CFR 61.51(j)(4) to include aircraft under direct operational control of forestry and fire protection agencies as public aircraft eligible for logging flight times. The FAA also proposes to codify section 5604 of the 2023 NDAA, which directs that under certain conditions, flight training, testing, and checking in experimental aircraft does not require a LODA from the FAA.

III. Logging Flight Time, Recent Flight Experience, and Flight Instructor Privileges

In 14 CFR part 61, the FAA proposes to modify §§ 61.51, 61.57, 61.193, and 61.413. First, the FAA proposes to modify § 61.51 to expand PAO under which a pilot may credit flight time towards FAA civil regulatory requirements. Second, the FAA proposes to modify § 61.57(e) to include an exception to the recent flight experience requirements for flight instructors and certificated pilots while conducting flight training for the purpose of meeting recent flight experience requirements. Third, the FAA proposes to modify §§ 61.193 and 61.413 to clarify the privileges an authorized flight instructor may exercise within the limits of their certificate.

A. Logging Flight Time in Public Aircraft Operations (§ 61.51)

1. Aircraft Requirements for Logging Flight Time

As specified in 14 CFR part 61, pilots must document and record certain aeronautical experience.[4] Section 61.51 provides the requirements for logging aeronautical experience for airman certificates, ratings, privileges, and flight experience. In particular, § 61.51(j) specifies the aircraft requirements for logging flight time. Section 61.51(j) states that, for time to be logged, it must be acquired in an aircraft that is identified as an aircraft under § 61.5(b)[5] and is (1) an aircraft of U.S. registry with either a standard or special airworthiness certificate, (2) an aircraft of foreign registry with an airworthiness certificate that is approved by the aviation authority of a foreign country that is a Member State to the Convention on International Civil Aviation Organization (ICAO), (3) a military aircraft under the direct operational control of the U.S. Armed Forces, or (4) an aircraft engaged in a public aircraft operation (PAO) while engaged

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[4] Section 61.51(a) specifies that certain training time and aeronautical experience must be documented and recorded in a "form and manner acceptable to the Administrator." Often, this is accomplished through maintaining a logbook.

[5] Section 61.5(b) lists the aircraft ratings that are placed on pilot certificates issued under part 61. The ratings include category ratings (e.g. airplane, rotorcraft) and class ratings (e.g. multiengine land, helicopter).

on an official law enforcement flight for a Federal, State, county, or municipal law enforcement agency.

The FAA added § 61.51(j) in 2009, after Congress passed Pub. L. 106-424.[6] Section 14 of Pub. L. 106-424 specified that an aircraft must hold an airworthiness certificate, with some exceptions, for a pilot to log flight time to meet the certificate, rating, or recent flight experience requirements under part 61.[7] Before promulgation of § 61.51(j), the FAA did not expressly prescribe in regulation aircraft or airworthiness requirements for when a pilot may log flight time.[8] In earlier versions of the regulation, the type of aircraft that could be flown to log flight time was not specified. Rather, FAA guidance to inspectors stated that, "[u]nless the vehicle is [type certificated] as an aircraft in a category listed in § 61.5(b)(1) or as an experimental aircraft, or otherwise holds an Airworthiness Certificate, flight time acquired in such a vehicle may not be used to meet requirements of part 61 for a certificate or rating or to meet the recency-of-experience requirements."[9]

Given the specific mandate from Congress, in § 61.51(j), the FAA codified its existing guidance, added a provision for logging time in military aircraft, and as directed by the legislation, included § 61.51(j)(4) to permit individuals to log flight time in aircraft used in PAO for official law enforcement activities.

The current language of § 61.51(j)(4) applies only to law enforcement pilots and does not permit other pilots who conduct PAO to credit flight time toward FAA requirements if the

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[6] Pub. L. 106–424, section 14, Crediting of Law Enforcement Flight Time (Nov. 1, 2000). In determining whether an individual meets the aeronautical experience requirements imposed under section 44703 of Title 49, United States Code, for an airman certificate or rating, the Secretary of Transportation shall take into account any time spent by that individual operating a public aircraft as defined in section 40102 of Title 49, United States Code, if that aircraft is— (1) identifiable by category and class; and (2) used in law enforcement activities.

[7] Pilot, Flight Instructor, and Pilot School Certification, 74 FR 42499 (Aug. 21, 2009).

[8] Pilot, Flight Instructor, and Pilot School Certification, 74 FR 42499, 42515 (Aug. 21, 2009).

[9] FAA Order 8900.1, Volume 5, Chapter 2, Section 5, Paragraph 5-316B.

aircraft does not also meet another provision under § 61.51(j). Section 517 of the FAA Reauthorization Act of 2018, Pub. L. 115–254 (section 517) directs the FAA to expand PAO logging opportunities by permitting pilots to log flight time in aircraft under the direct operational control of forestry and fire protection agencies when conducted as PAO. Notwithstanding the limited scope of section 517, the FAA is proposing to amend § 61.51(j)(4) to allow logging of flight time for pilots engaged in any PAO in accordance with 49 U.S.C. 40102(a)(41) and 40125(a)(2). This proposal would expand § 61.51(j)(4) not only to law enforcement and forestry and fire protection services as directed by Congress, but to any PAO including, but not limited to, those involving national defense, intelligence missions, search and rescue, aeronautical research, and biological or geological resource management.

This proposal would also broaden the scope of aircraft requirements in § 61.51(j) for logging flight time. The FAA recognizes that the 2009 rule change, which codified these requirements in response to section 14, prohibited individuals conducting PAO, with the exception of law enforcement personnel, from logging flight time unless the aircraft could meet another provision under § 61.51(j). The FAA now proposes to eliminate this distinction between law enforcement personnel and all other individuals engaged in PAO by allowing logging of flight time for PAO conducted in aircraft other than those listed in § 61.51(j)(1) through (3).

The FAA finds that amending the regulatory language to include all aircraft engaged in PAO would not adversely affect safety. PAO already occur within the national airspace system (NAS), and the FAA is now proposing to allow pilots to credit these operations towards certain civil regulatory requirements under part 61 like total flight time and recent flight experience.

Flight experience gained during PAO is relevant to a pilot's qualifications and currency under FAA regulations. Whether a pilot is engaged in civil or public aircraft operations, the pilot must follow flight rules in part 91. The pilots engaged in PAO interact with air traffic control (ATC) and aircraft in the NAS the same as those engaged in civil aircraft operations. In addition,

pilots conducting PAO abide by the same rules governing airspace classifications, right-of-way, aircraft speed, and airspace restrictions. Pilots conducting PAO also must act consistently with FAA weather minima, minimum altitude requirements, instrument approach procedures, and other operating rules applicable to certain persons and aircraft. Pilots conducting PAO also employ many of the same aeronautical skills and accomplish the same flight time as their counterparts performing civil operations, including takeoffs and landings, visual and instrument procedures, risk management, and enroute operations.

The FAA understands that pilots engaged in PAO may have been memorializing their flight time in accordance with the requirements of the government entities under which they operate, even though the FAA does not currently recognize this time under § 61.51 to satisfy civil regulatory requirements. Those pilots who have not documented this time may begin recording their PAO flight time in accordance with this proposed rule in the event that this proposed rule becomes final. In this regard, the proposed modification would permit PAO pilots to credit their recorded flight time towards satisfying FAA requirements retroactively. Any prior PAO aeronautical experience logged by a pilot must meet the requirements in § 61.51.

Although a pilot's total time may be used to meet certain flight time requirements for certificates, ratings, or recent flight experience, like that required for § 61.57, the FAA notes that flight time in PAO may not satisfy all part 61 requirements, such as a flight review, a pilot-in-command (PIC) proficiency check, or practical test. However, the recorded time may not be creditable toward any pilot qualification or requirement if the rule does not become final.

Finally, the FAA notes that, a pilot logging flight time is responsible for knowing whether they are engaging in operations that are PAO or civil operations.

2. Second-in-Command Flight Time in Aircraft Engaged in Public Aircraft Operations

The current second-in-command (SIC) logging regulations do not adequately address aircraft used in PAO that do not also hold airworthiness certificates issued by the FAA. For example, the SIC logging requirements in § 61.51(f) permit a person to log time as SIC based on the number of pilots required by the type certification of the aircraft or the regulations under which the flight is conducted. In addition, since 2018, part 135 SICs who are not required by the type certification of the aircraft or the part 135 operating rules also may log SIC flight time under § 61.51(f)(3) as part of an approved SIC professional development program (SIC PDP) consistent with the requirements in § 135.99(c).[10] For aircraft exclusively used in PAO that do not hold airworthiness certificates, there may be no type certificate designating that two pilots are required. In addition, PAO are not subject to FAA regulations on SIC requirements (e.g., § 91.531). As such, under § 61.51(f), an assigned second pilot in a PAO does not meet the requirements to log SIC time.

While section 517 is silent as to how pilot time may be logged, whether as PIC or SIC, the FAA now proposes to clarify the pilot time that may be logged to meet FAA requirements in response to questions from the regulated community. Pilots conducting qualified PAO are not required to meet FAA pilot certification requirements. Instead, the government entity may develop its own pilot qualification requirements for these operations. Therefore, the FAA proposes to explicitly allow the logging of SIC time during PAO, with certain limitations, to encourage safety and promote consistency with the regulated community.

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[10] 83 FR 30232 (Jun. 27, 2018).

To determine the appropriate scope of the proposal regarding SIC logging during PAO, the FAA considered the requirements set forth in § 91.531 and 14 CFR part 135. For operations under part 91, § 61.51(f) allows a pilot to log SIC time in those airplanes when operating in accordance with § 91.531(a). Section 91.531 specifies requirements to operate with an SIC in certain airplanes, such as those type certificated for more than one required pilot, large airplanes, and commuter category airplanes. Likewise, for a part 135 pilot to log SIC time under § 61.51(f), a second pilot must either be required by the aircraft type certificate, operating rule, or as prescribed in § 135.99.[11] These operating rules under which a pilot may log SIC time are established based on complexity of the operation. Examples of aircraft that may require additional flightcrew members include large aircraft or turbojet -powered airplanes, or complex operations such as part 135 passenger carriage under instrument flight rules. Often, large aircraft[12] and turbojet-powered airplanes have a requirement for a second pilot listed in the limitations section of the flight manual or on the type certificate data sheet, if applicable. Section 91.9 requires that a person must operate a civil aircraft in accordance with the aircraft flight manual.

Since aircraft used in PAO might not hold an airworthiness certificate, there may be no associated aircraft flight manual or type certificate. Additionally, the FAA regulations governing crew complement discussed earlier do not apply to PAO. Finally, because a PAO is not a part 135 operation, the part 135 operating rules (i.e., § 135.99(c)) that allow for logging SIC time are unavailable to PAO pilots.

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[11] Section 135.99(a) provides that no certificate holder may operate an aircraft with less than the minimum flight crew specified in the aircraft operating limitations or the Aircraft Flight Manual for that aircraft. Paragraph (b) states that no certificate holder may operate an aircraft without a second in command if that aircraft has a passenger seating configuration, excluding any pilot seat, of ten seats or more. Paragraph (c) establishes the SIC PDP, which permits a pilot employed by the certificate holder to log SIC flight time under certain conditions for operations conducted under parts 91 and 135.

[12] See 14 CFR 1.1 defining "large aircraft" as "aircraft of more than 12,500 pounds, maximum certificated takeoff weight."

As previously discussed, certain aircraft used in civil operations require a second pilot for safety due to design complexity or operational requirement. Enabling pilots to log SIC time while operating a PAO encourages the use of a second pilot where one may not be required and increases overall safety in the NAS. In addition, the presence of a second pilot onboard the aircraft provides additional resources to reduce PIC workload during critical phases of flight, monitor for emergency circumstances, survey weather conditions, and ensure safe operations. Thus, the FAA seeks to encourage the presence of a second pilot in aircraft that would otherwise require a second pilot under civil operations.

Consistent with the foregoing discussion, the FAA proposes to enable logging of SIC time to meet FAA requirements in large aircraft and turbojet powered airplanes. Likewise, the FAA proposes that, if an aircraft holds or held a type certificate that requires a second pilot, PAO pilots may also log SIC time. This proposal is similar to the regulatory framework under which pilots serving in civil operations may log flight time[13] and, therefore, would allow PAO pilots to credit their flight time towards FAA requirements in a similar manner to pilots conducting civil operations. The proposal would permit PAO pilots to credit their recorded flight time towards satisfying FAA requirements retroactively.

Additionally, although PAO are conducted outside of FAA aircraft and airmen certification requirements and certain safety oversight regulations, each government entity is responsible for its own pilot qualifications. For many government entities, this includes adopting the same standards as those codified in 14 CFR to ensure pilot and public safety. Logging flight time in PAO also provides a record of the pilot's experience. By allowing pilots to credit their time conducting PAO, the proposed rule would enable the FAA to review the totality of an

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[13] See 14 CFR 91.531, 135.99(a).

individual pilot's flight experience to satisfy civil requirements. Likewise, enabling this time to be credited toward civil requirements will create efficiency for affected pilots by removing the need for duplicative flight time to be accomplished. In turn, the FAA could more effectively ensure and oversee safety in the NAS. Accordingly, the FAA proposes to add § 61.51(f)(4) to clarify that a person designated as SIC by a government entity may log SIC time if the aircraft used was a large aircraft as defined in § 1.1, a turbo-jet powered airplane, or if the aircraft holds or originally held a type certificate that requires a second pilot.

The FAA reviewed the minimum aeronautical experience requirements for certification and ratings and found that the proposed SIC logging time should be limited to pilots seeking an airplane transport pilot (ATP) certificate. The FAA continues to find that ATP hours are largely related to building time and experience whereas flight time necessary to meet minimum aeronautical experience requirements for private pilot, commercial, and instrument rating is more directly related to building specific skillsets. Moreover, the required training and aeronautical experience pilots accumulate in order to obtain these certifications and ratings are fundamental building blocks necessary for the development of proper aeronautical decision-making and skills.

In this regard, the FAA does not believe that pilots utilizing proposed § 61.51(f)(4) for building time towards meeting the aeronautical experience requirements for a private pilot certificate, commercial certificate, and instrument rating would be in the interest of safety. This distinction is supported by the fact that the aeronautical experience requirements for the ATP certificate explicitly enable crediting of SIC time, whereas the aeronautical experience requirements for the private and commercial certificates and instrument rating do not explicitly reference SIC flight time. Therefore, the FAA proposes adding § 61.51(f)(4)(i) to explicitly state that SIC time logged under paragraph (f)(4) may not be used to meet the aeronautical experience requirements for the private or commercial pilot certificates or an instrument rating.

The FAA notes that ICAO standards do not recognize the crediting of flight time when a pilot is not required by the aircraft certification or the operating rules under which the flight is being conducted. Accordingly, all pilots who log flight time under this provision and apply for an ATP certificate would have a limitation on the certificate indicating that the pilot does not meet the PIC aeronautical experience requirements of ICAO. For this reason, the FAA proposes to add § 61.51(f)(4)(ii) to clearly delineate that an applicant for an ATP certificate who logs SIC time under § 61.51(f)(4) is issued an ATP certificate with the limitation, "Holder does not meet the pilot in command aeronautical experience requirements of ICAO," as prescribed under Article 39 of the Convention on International Civil Aviation if the applicant does not meet the ICAO requirements contained in Annex 1 "Personnel Licensing" to the Convention on International Civil Aviation. The FAA notes that an applicant is entitled to an ATP certificate without the ICAO limitation specified under this provision when the applicant presents satisfactory evidence of having met the ICAO requirements and otherwise meets the aeronautical experience requirements of § 61.159[14].

Additionally, to streamline the proposed revisions to § 61.51(f) with other pilots who apply for an ATP certificate with an ICAO limitation, the FAA proposes to amend §§ 61.159(e)[15] and 61.161(d)[16] to reference § 61.51(f)(4). This proposed revision to the aeronautical experience requirements of §§ 61.159 and 61.161 would allow a pilot to credit SIC time logged under PAO toward the total time for an ATP certificate.

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[14] Section 61.159 specifies the aeronautical experience requirement for obtaining an ATP certificate with an airplane category and class rating.

[15] Section 61.159(e) specifics the activities that necessitates the limitation "Holder does not meet the pilot in command aeronautical experience requirements of ICAO" on an ATP certificate with an airplane category and class rating.

[16] Section 61.161(d) specifics the activities that necessitates the limitation "Holder does not meet the pilot in command aeronautical experience requirements of ICAO" on an ATP certificate with a rotorcraft category and helicopter class rating.

B. Recent Flight Experience (§ 61.57)

Section 61.57 contains recent flight experience requirements to maintain privileges to act as PIC under certain scenarios, including requirements to complete takeoffs and landings in order continue to act as PIC of a flight that is carrying passengers.[17] The FAA proposes to add § 61.57(e)(5) to codify an exception that, in certain circumstances, would enable a person receiving flight training to act as PIC, even if that person does not meet the recent flight experience requirements for carrying passengers under § 61.57(a) or (b). Specifically, the FAA proposes that an otherwise qualified pilot could act as PIC while receiving flight training given by an authorized flight instructor only for the purpose of meeting recent flight experience requirements, even if that person does not meet the requirements of § 61.57(a) or (b). This person must meet all other requirements to act as PIC, except for the recent flight experience requirements of § 61.57(a) or (b), and the authorized instructor and person receiving training must be the sole occupants of the aircraft.

The FAA has published numerous legal interpretations indicating the aforementioned operations are already permissible under existing regulations, notwithstanding the prohibition on passenger-carrying flights; however, upon reconsideration, the FAA has determined the plain text of the regulations does not support the conclusions in these interpretations. For example, in the FAA Legal Interpretation to Kris Kortokrax, Mr. Kortokrax suggested that a flight instructor who has not met the recent night takeoff and landing experience in § 61.57(b) should be able to

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[17] Section 61.57(a)(1) states that no person may act as PIC of an aircraft carrying passengers or of an aircraft certificated for more than one pilot flightcrew member unless that person has made at least three takeoffs and three landings within the preceding 90 days. Moreover, § 61.57(b)(1) specifies that no person may act as PIC of an aircraft carrying passengers during the period beginning one hour after sunset and ending one hour before sunrise, unless within the preceding 90 days, that person has made at least three takeoffs and three landings to a full stop during the period beginning one hour after sunset and ending one hour before sunrise.

accompany a pilot without being considered a passenger.[18] At that time, the FAA agreed and stated this training may take place even though neither pilot has met the § 61.57(b) requirement. Similarly, in the FAA Legal Interpretation to Roger Schaffner, Mr. Schaffner asked whether a flight instructor with an expired medical could provide flight training to a certificated pilot, even though the person receiving instruction did not comply with the recent flight experience requirement of § 61.57.[19] The FAA asserted that the person receiving the instruction could act as the PIC if that person met all other requirements to act as PIC, other than the recent flight experience requirements of § 61.57(a) or (b).

The FAA legal interpretations were based on the unsupported conclusion that a flight instructor and a person receiving flight training are not considered passengers to one another. In the FAA Legal Interpretation to Kris Kortokrax, the FAA stated that an authorized instructor providing flight training in an aircraft is not considered a passenger with respect to the person receiving training, even where the person receiving the flight training is acting as PIC. This conclusion was based on the premise that the instructor is not a passenger because the instructor is present specifically to train the person receiving flight training, and the person receiving flight training is similarly not a passenger with respect to the instructor. Likewise, the FAA Legal Interpretation to Roger Schaffner stated that a flight instructor with an expired medical certificate may instruct a person who is a private pilot with a current medical certificate and flight review, even if that person is not current to carry passengers per § 61.57(a) because the instructor is not considered a passenger when the instructor is present specifically to train the person receiving

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[18] The FAA addressed Mr. Kortokrax's concerns regarding night takeoff and landing experience for a PIC. The scenario included a pilot, who meets the rating and currency requirements except for § 61.57(b), seeking to have an authorized instructor in the aircraft when the pilot attempts to meet the requirements of § 61.57(b). Legal Interpretation to Kris Kortokrax (Aug. 22, 2006).

[19] Legal Interpretation to Roger Schaffner (May 5, 2014).

instruction.[20] Although the FAA makes the regulatory distinction in § 61.47(c) that during a practical test, the applicant and the (14 CFR part 183) examiner are not subject to the requirements or limitations for the carriage of passengers, the rule does not assert that the persons are not passengers to one another. Instead, it specifies that those persons are not subject to the limitations related to carriage of passengers. No such regulatory provision exists to make the same assertion regarding flight instructors and persons receiving flight training. Therefore, the aforementioned legal interpretations had no regulatory basis to assert that flight instructors and flight students were not considered passengers to one another. This proposed rule seeks to remedy the disparity between the aforementioned legal interpretations and current regulations by creating an exception to § 61.57(a) and (b) to enable the activities enumerated in the legal interpretations. Importantly, the proposed rule will not change the relationship between instructors and persons receiving flight training. The proposed rule does not assert that these persons are not passengers to one another. Instead, the proposal clarifies when these operations can be accomplished. Specifically, the FAA is proposing to codify the privileges described in the Kortokrax and Schaffner interpretations. Under the proposed rule, and consistent with the aforementioned legal interpretations, the FAA contemplates a scenario whereby neither the flight instructor nor the person receiving instruction has met the recent flight experience requirements of § 61.57(a) or (b). In this scenario, the person receiving instruction, if otherwise qualified, [21] would be permitted to act as the PIC and would not be subject to the requirements of § 61.57(a) or (b) to act as PIC.

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[20] Legal Interpretation to Roger Schaffner (May 5, 2014).

[21] A flight instructor may not be able to act as PIC for other reasons including a lack of medical qualification. Under §§ 61.3(c)(2)(viii) and 61.23(b)(5), a flight instructor does not need to hold a medical certificate while exercising the privileges of flight instructor certificate if the flight instructor is not acting as a required flightcrew member. To act as PIC or as a required flight crewmember, under § 61.23(a)(3)(ii) and 61.23(c)(1)(vi), when exercising the privileges of a flight instructor certificate, a flight instructor must possess at least a third-class medical certificate, or a U.S. driver's license if the flight is conducted under the conditions and limitations set forth in § 61.113(i).

To ensure safety, the FAA proposes to limit the types of operations and persons who may be on board. The proposed exception is limited to flight training to meet the recent flight experience requirement of § 61.57 (a) or (b), and no other persons may be on board the aircraft. Additional aircraft occupants could cause distractions, would not necessarily possess the knowledge and skills to operate the aircraft, and would not be in a position to act in the event of a problem; therefore, any additional persons would not enhance safety.

The FAA finds having a flight instructor on board promotes safety because a flight instructor is trained to monitor for pilot errors and can provide input on technique and best practices during critical phases of flight. The FAA continues to find, regardless of whether the flight instructor can act as PIC, the flight instructor's experience, knowledge, and risk management skills are valuable to the person receiving instruction and increase safety, both while in flight and for the public. In support of this proposal, the FAA emphasizes its longstanding recognition that flight training is a valuable activity and having a flight instructor onboard effectuates the FAA's goal of promoting safety especially in a scenario where a pilot is reestablishing privileges. Likewise, safety is enhanced because two pilots, one of whom is an authorized instructor, who are otherwise qualified to operate the aircraft are onboard and are available to act in the event of a problem. In accordance with § 61.23(a)(3)(ii), (b)(5), and (c)(1)(vi), a flight instructor who does not meet medical or driver's license requirements, as applicable, cannot act as PIC. In all cases, the person acting as PIC must meet all applicable medical or driver's license requirements to act as PIC.[22] The proposed rule does not change these requirements to act as PIC.

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[22] Section 61.23(a)(3)(ii) requires that a person must hold at least a third-class medical certificate when exercising the privileges of a flight instructor and acting as PIC or as a required flight crewmember. Section 61.23(b)(5) states that a person is not required to hold a medical certificate when exercising the privileges

The FAA notes that the proposed rule would not codify the position in certain legal interpretations that were an outgrowth of the Kortokrax and Schaffner interpretations. In FAA Legal Interpretation to John Olshock,[23] the FAA concluded that it would be permissible for a properly rated and current instructor (except for § 61.57(b)), and a student pilot (who is not yet rated in the aircraft but receiving training) to be on board an airplane together during night hours because neither was considered to be a passenger to the other. The proposed rule would not codify the conclusion made in Olshock that a flight instructor need not comply with § 61.57(a) or (b) when conducting flight training with someone receiving training who is not qualified to act as PIC or a person holding only a student pilot certificate. There is no adequate safety justification to continue to enable this activity.

In the proposed rule, the safety justification is supported by the fact that there are two certificated and otherwise qualified pilots who could each provide knowledge and skills appropriate to the operation of the aircraft. Not only is there a qualified flight instructor on board with the additional training and aeronautical skills necessary to become an authorized instructor, but the second pilot has also demonstrated PIC proficiency in the aircraft to an FAA examiner. Each of these pilots has the necessary skillset to operate the aircraft.

Similar to the legal interpretations related to § 61.57 exceptions for flight instructors, the FAA published interpretations that speak to the student/instructor relationship for the purpose of enabling certain operations for flight instructors who do not hold an FAA medical certificate.[24] The FAA amended § 61.23 in April 1997 to clarify when a flight instructor must hold a medical

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of a flight instructor certificate if the person is not acting as PIC or serving as a required flight crewmember. Section 61.23(c)(1)(vi) requires a person hold either a medical certificate issued under part 67 or a U.S. driver's license when exercising the privileges of a flight instructor certificate and acting as PIC or as a required flight crewmember if the flight is conducted under the conditions and limitations set forth in § 61.113(i).

[23] Legal Interpretation to John Olshock (May 4, 2007).

[24] See Legal Interpretation to E.V. Fretwell (Sept. 18, 1995).

certificate or driver's license, as applicable. Because § 61.23 was already amended and the proposed addition to § 61.57(e) provides a regulatory exception to § 61.57(a) and (b) for persons receiving flight training in certain circumstances, the FAA proposes to rescind the Legal Interpretation to Kris Kortokrax, Legal Interpretation to John Olshock, Legal Interpretation to Roger Schaffner, and Legal Interpretation to E.V. Fretwell 30 days after the publication of this NPRM. These legal interpretations are not supported by current FAA regulations and with the publication of the proposed final rule, would no longer be necessary to support the operations they intended to clarify.

C. Flight Instructor Privileges (§§ 61.193 and 61.413)

Sections 61.193 and 61.413 set forth the privileges of flight instructors and sport pilot instructors, respectively. Under §§ 61.193(a)(1) through (9) and 61.413(a)(1) through (9), an authorized flight instructor may train and provide endorsements required for certificates, ratings, operating privileges, recency of experience requirements, and tests. The areas listed do not specifically address elective and specialized training activities that the FAA encourages but which are not required to meet FAA regulations. These activities include, but are not limited to, transition training to a new make and model for which a pilot is already rated but has never flown or lacks familiarity, and conventional instrumentation to technically advanced aircraft training.

The FAA proposes clarifying amendments to §§ 61.193 and 61.413 to conform the regulations with current FAA policy and industry practice. First, the FAA proposes to modify the introductory text of §§ 61.193(a) and 61.413(a) to clarify that, within the limits of their certificates, authorized flight instructors may conduct ground and flight training, and certain checking events, in addition to issuing endorsements. Second, the FAA proposes to add "maintaining or improving skills for certificated pilots" to §§ 61.193(a)(7) and 61.413(a)(6) to clarify that flight instructors are authorized to conduct certain specialized and elective training.

Third, the FAA proposes to add §§ 61.193(c) and 61.413(c) to clarify that the privileges afforded to authorized flight instructors under these provisions do not permit operations that would require an air carrier or operating certificate or specific authorization from the Administrator.

Under the current text of §§ 61.193 and 61.413, an authorized flight instructor may conduct training related only to endorsing a person for certificates, ratings, operating privileges, recency of experience requirements, and tests. First, this proposal amends the introductory text in paragraphs of §§ 61.193(a) and 61.413(a) to clarify that an authorized flight instructor may provide training and certain checking events even when the training is not conducted in furtherance of issuing an endorsement required by FAA regulation. The FAA notes that current §§ 61.193(a) and 61.413(a), and their corresponding reliance on endorsements listed in §§ 61.193(a)(1) through (9) and 61.413(a)(1) through (9), excludes an express reference to elective and specialized training activities that are elsewhere encouraged.

For example, although the FAA encourages specialized elective pilot training under Advisory Circular 90-109,[25] current § 61.193 does not explicitly list these types of flight training activities in the flight instructor privileges. Similarly, while the FAA flight instructor handbooks promote specialized elective training, such as transition training and upset recovery training, §§ 61.193 and 61.413 do not list this type of activity as flight instructor privileges. These examples illustrate that amending §§ 61.193 and 61.413 is necessary to align the regulatory text with current policy and industry practice and encourage flight training activities in the interest of public safety.

The proposed modification to §§ 61.193(a) and 61.413(a) also clarifies that flight instructor privileges include certain checking events, when the instructor is appropriately

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[25] Advisory Circular 90-109A, Transition to Unfamiliar Aircraft (Jun. 29, 2015).

authorized. This may include instrument proficiency checks (IPC), night vision goggle proficiency checks (NVG), sport pilot proficiency checks, and part 141 checks. To date, these functions have been an implicit privilege for flight instructors. This proposed modification to §§ 61.193(a) and 61.413(a) makes these privileges explicit.

Next, the FAA proposes to modify §§ 61.193(a)(7) and 61.413(a)(6) to clarify that an authorized instructor may conduct pilot training related to maintaining or improving skills for certificated pilots, consistent with FAA publications and current industry practice. For example, the aforementioned Advisory Circular 90-109 provides recommendations to pilots transitioning to an unfamiliar aircraft, which includes training with a flight instructor. Additionally, Advisory Circular 61-98, recommends recurrent training to maintain proficiency. For instances, Advisory Circular 61-98, states that "recurrent training, including a flight to a towered airport with an experienced flight instructor, is a good way to gain proficiency with airport operations and to develop the required skills to avoid runway incursions."[26] The proposed modification to §§ 61.193(a)(7) and 61.413(a)(6) refers to training that advances a pilot's preexisting flying knowledge or skills. Pilots may undergo this type of training to increase their proficiency in areas that may not require specific endorsements. Thus, the training contemplated under proposed §§ 61.193(a)(7) and 61.413(a)(6) may include transition training to operate a new aircraft of the same category and class, aerobatic training, formation training, and mountain flying. While none of these skills require an endorsement, this training is highly beneficial and increases safety for already certificated pilots who intend to perform these types of operations. The proposed training does not contemplate learning basic flying skills, as in the case of a student pilot. Instead, the

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[26] Advisory Circular 61-98D, *Currency Requirements and Guidance for the Flight Review and Instrument Proficiency Check*, paragraph 2.3.6.1 (Apr. 30, 2018).

proposed training includes only training for pilots to maintain or advance preexisting skills, not the initial inception or development of pilot knowledge.[27]

The FAA finds that having an authorized instructor present in the aircraft during specialized and elective training events, and in other scenarios not undertaken in furtherance of meeting a specific regulatory requirement, promotes safety. Flight training, regardless of whether it is necessary to meet a regulatory requirement, improves pilot skills and abilities. As noted, it has been longstanding industry practice, and the proposed regulation merely clarifies that such training is an appropriate exercise of a flight instructor's privileges.

Section 61.1 defines flight training as training received from an authorized instructor. This section generally defines an authorized instructor as a person who holds a flight instructor certificate and who is conducting training in accordance with the privileges and limitations of the flight instructor's certificate. As previously described, the privileges enumerated in § 61.193 do not currently list training related to maintaining or improving skills for certificated pilots; therefore, this time would not be considered flight training under the express text of the regulation.[28] The proposed modification to this rule would legitimize this time and enable authorized flight instructors to log this time as flight training. In addition, permitting authorized flight instructors to log their flight time during these operations promotes training and incentivizes instructors to engage in this activity.

If these amendments are finalized as proposed, the FAA proposes to rescind the Mostofizadeh legal interpretation.[29] In pertinent part, this interpretation found that certificated flight instructors providing flight training during formation flights were not acting as authorized

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[27] For example, this training would not include aerobatic flights offered to non-pilots.

[28] Under § 61.51(e)(3), an authorized instructor may log PIC time for all flight time "while serving as the authorized instructor" in an operation if the instructor is rated to act as pilot in command of that aircraft.

[29] Legal Interpretation to Djavad Mostofizadeh (Apr. 19, 2013).

instructors.[30] The interpretation concluded that the definition of "instruction" from § 61.193 only included training activities conducted to satisfy a pilot's certificates, ratings, operating privileges, recency of experience requirements, and testing. The FAA recognizes that the interpretation, although consistent with the current regulations, would be inconsistent with this proposal if finalized. As such, the FAA will rescind the interpretation if it finalizes this rule.

The FAA's third proposal would add new §§ 61.193(c) and 61.413(c) to clarify that no privileges beyond bona fide ground and flight training, and certain authorized checking events, are contemplated within flight instructor privileges. Specifically, the proposed paragraphs would clarify that an authorized flight instructor cannot utilize the privileges afforded under §§ 61.193(a) and 61.413(a) to conduct any operation that would otherwise require an air carrier certificate, operating certificate, or specific authorization from the Administrator.

For example, an instructor is not authorized under this section to solely provide transportation or conduct commercial air tours or otherwise engage in transportation under the guise of flight training.[31] Likewise, offering introductory or "orientation" flights to non-pilots that maintain no intention of, or interest in, obtaining pilot credentials would likely not fall within the purview of a flight instructor's privileges, but would likely be considered to be air tours.[32] As specified in proposed §§ 61.193(c) and 61.413(c), an authorized instructor may not engage in commercial operations that would otherwise require an air carrier certificate, operating

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[30] Section 61.1 defines "authorized instructor," in relevant part, as a person who holds a valid flight instructor certificate when conducting ground training or flight training "in accordance with the privileges and limitations" of their flight instructor certificate. Those privileges are set forth in § 61.193(a).

[31] See Legal Interpretation to Doug McQueen, p. 3 (Apr. 16, 2013).

[32] See Legal Interpretation to William Grannis (Aug. 3, 2017) (explaining that "flight training" contemplates that "purpose of the flight must be student instruction"); see also Legal Interpretation to Doug McQueen, p. 3 (Apr. 16, 2013) (explaining that "a flight conducted for compensation or hire…where a purpose of the flight is sightseeing" is a "commercial air tour"); and Legal Interpretation to Michael Mason (Oct. 3, 2012) (quoting 2007 Final Rule for proposition that "sightseeing is not always a purpose of the barnstorming or vintage aircraft flight [but] the FAA considers the overall character of the flight to be sightseeing, even if a primary purpose may be the experience of flight in an historic aircraft") (internal brackets and citation omitted).

certificate, or a specific authorization from the Administrator, under the auspices of flight training. Misuse of §§ 61.193 and 61.413 to provide commercial air tours, is not permitted.

When ascertaining whether an operation is considered flight training, the FAA may examine the primary purpose of the flight and whether the person being carried for compensation or hire is interested in flight training.[33] Flights for compensation or hire that would likely not be construed as flight training include a one-time aerobatic or barnstorming flight for a person who holds no pilot credentials or an individual "fulfilling a one-time bucket list item."[34] In these scenarios, the person has no intention of obtaining flight training, but rather is on board for the experience of the flight itself. Operations of this nature would not fall under the § 119.1(e)(1) "student instruction" exclusion and would continue to require an air carrier or commercial operator certificate issued in accordance with part 119 or a specific authorization from the Administrator, such as a commercial air tour letter of authorization. Conversely, persons who may be interested in pursuing flight training will necessarily have a first introductory flight with an authorized instructor where basic flying skills are introduced. This type of introductory flight, conducted for educational purposes, would be considered flight training.

The FAA also notes that, aside from permitting an authorized flight instructor to conduct certain checking events and training related to maintaining or improving skills for certificated pilots, the requirements in §§ 61.193 and 61.413 remain unchanged. For example, the list of endorsements an authorized instructor may issue remains unchanged under both affected sections. In this regard, the proposed amendments do not change the requirement that an

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[33] Legal Interpretation to Michael Mason (Oct. 3, 2012) (explaining that FAA may consider several factors when determining whether a flight is conducted for flight training).

[34] See Legal Interpretation to William Grannis (Aug. 3, 2017) (explaining that because "persons being carried for compensation or hire are not interested in flight training … [i]t is therefore unlikely that the purpose of these flights would be student instruction").

instructor must be authorized in accordance with the definitions provided in § 61.1(b) to conduct flight training.

Authorized flight instructors that conduct training and checking events under this proposed amendment may begin documenting and recording their flight time to prepare if this proposal becomes final. The FAA notes that many instructors have historically logged this time, despite the fact that the regulatory language did not explicitly enable it. If the proposals related to flight instructors are adopted in a final rule, the FAA will permit instructors to credit their prior flight time consistent with this amendment retroactively. As a result, the FAA encourages authorized instructors to begin documenting and recording this time, if not already part of their standard practice, to receive credit if this proposal is adopted.

While the FAA did not evaluate similar changes to § 61.133(a)(2)(i)(E) and (ii)(D) for airship and balloon flight training, the Administrator seeks public comment on the merits of making the same change for commercial pilots with lighter-than-air category ratings who provide flight training in the final rule, if adopted.

IV. Aircraft Holding Certain Special Airworthiness Certificates

A. Background: Emergency Cease and Desist Order, Litigation, and FAA Notice

The restrictions on operating aircraft that hold special airworthiness certificates carrying people for compensation or hire recently came under review as a result of an emergency cease and desist order issued to Warbird Adventures, Inc. by the FAA in 2020.[35] In that case, the operator maintained a publicly available website that advertised opportunities to fly in a limited category aircraft at upcoming airshows and allowed members of the public to book flights in exchange for compensation. The operator brought a petition for review of the emergency order

[35] Emergency Cease and Desist Order Issued by the Federal Aviation Administration (July 28, 2020).

before the court.[36] The operator argued it was conducting flight training for compensation in its limited category aircraft, which it claimed is not a prohibited activity under § 91.315.[37] In response, the FAA argued that, under the plain language of § 91.315, flight training for compensation constitutes operating a limited category aircraft carrying a person for compensation or hire and, therefore, is a violation of the regulation.[38]

On April 2, 2021, the Court dismissed the petition for review of the cease and desist order.[39] Following the Court's dismissal, several aviation industry groups sought clarification from the FAA on how the decision affected flight training in experimental aircraft, since the prohibitory language of § 91.315 for limited category aircraft is the same as that in § 91.319 for experimental aircraft. In particular, industry advocates sought clarification on whether the owner of an experimental aircraft who receives and pays for flight training in that aircraft is operating the aircraft carrying a person for compensation or hire. Similarly, industry advocates asked whether the flight instructor also was operating the aircraft in violation of the prohibition in § 91.319. Industry noted that FAA guidance at that time allowed an experimental aircraft to be used in such a way without running afoul of the requirement to obtain a LODA to conduct flight training.[40]

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[36] Warbird Adventures, Inc. v. Fed. Aviation Admin., Petition for Review from an Emergency Cease and Desist Order Issued by the Federal Aviation Administration on July 28, 2020, Doc. No. 1854466 (D.C. Cir. 2020).

[37] The FAA has not conceded that the flights being operated were for the purpose of legitimate flight training.

[38] Section 91.315 states, "No person may operate a limited category civil aircraft carrying persons or property for compensation or hire."

[39] The Court stated: "A flight student is a "person." *Id.* § 91.315; *see also id*. § 1.1. When a student is learning to fly in an airplane, the student is "carr[ied]." *Id.* § 91.315. And when the student is paying for the instruction, the student is being carried "for compensation." *Id.*" Warbird Adventures, Inc. v. Fed. Aviation Admin., 843 F. App'x 331 (D.C. Cir. 2021).

[40] The guidance (FAA Order 8900.1, Vol. 3, Chpt. 11, sec. 1, para. 3-292) stated that flight instructors may receive compensation for providing flight training in an experimental aircraft but may not receive compensation for the use of the aircraft in which they provide that flight training unless they obtain a LODA issued under § 91.319(h). Likewise, the guidance stated that owners of experimental aircraft may receive and provide compensation for flight

In response, the FAA published a Notification of Policy in the *Federal Register* laying out its position that, when compensation is provided for flight training, it is contrary to the prohibition on operating an aircraft carrying a person for compensation or hire even when no compensation is provided for the use of the aircraft.[41] The FAA announced that it would rescind the agency guidance that conflicted with the plain meaning of the regulation and noted it would consider a future rulemaking to remove obstacles to flight training for owners of aircraft with certain special airworthiness certificates while maintaining prohibitions on broadly offering these aircraft for flight training to the public. This NPRM proposes those changes.

In addressing the flight training concerns, the FAA has also found conflicts between the general prohibitions in §§ 91.315, 91.319, and 91.325 (applicable to limited category, experimental and primary category aircraft respectively) and operating limitations placed on these aircraft during the aircraft certification process, legal interpretations, and guidance related to carriage of persons or property aboard these aircraft during operations involving compensation or hire. Terms within these regulations are either broadly defined (e.g., operate, person) or have been broadly interpreted over time (e.g., compensation), resulting in obstacles to certain flight training that the FAA did not intend.

For example, since the FAA considers a flight instructor to be operating an aircraft carrying a person for compensation or hire (even when the compensation is paid only for the flight training), then any pilot who receives compensation for piloting a limited category, experimental, or primary category aircraft would be in violation of the rule when operating an

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training in their aircraft without a LODA, but owners may not receive compensation for the use of their aircraft for flight training except in accordance with a LODA issued under § 91.319(h).

[41] Notification of Policy for Flight Training in Certain Aircraft, 86 FR 36493 (Jul. 12, 2021).

aircraft for compensation with another person is on board.[42] The FAA did not intend to prohibit a pilot's receipt of compensation for operations which may incidentally carry persons in aircraft with certain special airworthiness certificates. In fact, as discussed later in this section, the FAA finds that some operations of these aircraft necessarily involve carrying people when compensation is provided to the operator or flightcrew.

The following discussion provides further explanation of the obstacles created by the current regulatory language. With respect to an aircraft, the word "operate" is broadly defined in § 1.1 as "use, cause to use or authorize to use aircraft, for the purpose (except as provided in § 91.13 of this chapter) of air navigation including the piloting of aircraft, with or without the right of legal control (as owner, lessee, or otherwise)." While the term "operate" may refer to the person piloting an aircraft, it also extends to aircraft owners who use an aircraft without piloting it, to owners who authorize someone else to use the aircraft, and to the persons that the owner authorizes to use the aircraft. Under the regulatory definition, an aircraft may be operated by more than one person for purposes of part 91 regulations.[43]

Likewise, the phrase "operate carrying persons or property for compensation or hire" has been viewed to mean that the receipt of compensation is in exchange for the carriage of persons or property rather than that there is receipt of compensation for operating while carrying persons or property. Importantly, "carriage" does not necessarily mean transportation from place to place

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[42] The FAA notes that, while it may seem inappropriate to apply the word "operate" to required flightcrew in this scenario, other part 91 regulations that use the word "operate" are clearly intended to apply to both the owner of an aircraft and the required flightcrew. For example, it would create an absurd result to suggest that § 91.111(a), which states "no person may operate an aircraft so close to another aircraft as to create a collision hazard," should not be applied to the flightcrew. It would result in confusion if the regulated community cannot rely on a consistent application of the term "operate" throughout part 91.

[43] For example, § 91.7(a) prohibits any person from operating a civil aircraft unless it is in an airworthy condition. A violation of this regulation would likely involve the pilot in command who is responsible for determining whether that aircraft is in condition for safe flight under § 91.7(b), but it may also involve the owner of the aircraft if the owner is shown to have authorized the use of the aircraft in an unsafe condition.

nor does it speak to the reason a person is being carried. Any person on board an aircraft with another is considered to be "carried."[44] Therefore, the regulations could be interpreted to mean that no person may receive compensation for an operation which carries persons or property, regardless of the nature of the operation or whether compensation is provided for some service other than the carriage of persons.

Furthermore, the FAA has consistently construed "compensation" broadly.[45] Given this broad definition, there are a number of scenarios where operations may be precluded that the FAA did not intend to foreclose. For instance, flights involving an aircraft manufacturer carrying prospective customers in an aircraft with an experimental special airworthiness certificate utilizing the experimental market survey purpose or a flight instructor providing customer crew training under this purpose could be in violation if the pilot or instructor, respectively, is being compensated. [46]

With this proposed rule, the FAA seeks to narrow and more clearly define the types of operations that are precluded in aircraft holding certain special airworthiness certificates. Therefore, the FAA is proposing changes to clarify how these aircraft may be operated.

Should the modifications to the part 91 regulations proposed by this rule become final, the FAA will rescind certain legal interpretations related to the carriage of persons or property for compensation or hire in limited category, experimental, and primary category aircraft (i.e.,

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[44] There are a number of operations permitted under part 91 operating rules that involve the carriage of persons that are not point-to-point transportation.

[45] *See* Legal Interpretation to Joseph Kirwan (May 27, 2005). Compensation "does not require a profit, a profit motive, or the actual payment of funds." Rather, compensation is the receipt of anything of value. *See also* Legal Interpretation to John W. Harrington (Oct. 23, 1997); Blakey v. Murray, NTSB Order No. EA-5061 (Oct. 28, 2003). The FAA has previously found that reimbursement of expenses (fuel, oil, transportation, lodging, meals, etc.), accumulation of flight time, and goodwill in the form of expected future economic benefit could be considered compensation.

[46] See § 21.191(f), which describes the market survey purpose as, "Use of aircraft for purposes of conducting market surveys, sales demonstrations, and customer crew training only as provided in § 21.195."

Legal Interpretation to Bob Shaw (Feb. 4, 2008), Legal Interpretation to Joy Ratini (Apr. 30, 2014), Legal Interpretation to Gregory Morris (Oct. 7, 2014), and Legal Interpretation to E.J. Sinclair (Jul. 22, 2015)). The purpose of those affected legal interpretations was to explain the circumstances under which persons or property could be carried for compensation or hire under §§ 91.315, 91.319, and 91.325. However, the modifications proposed by this rule would implement a new regulatory structure which would replace the explanations provided by the legal interpretations.

B. Part 91 Regulations Governing the Operation of Aircraft with Certain Special Airworthiness Certificates (§§ 91.315, 91.319, 91.325, and 91.327)

The FAA proposes to amend the part 91 regulations governing the operation of limited category, experimental, and primary category aircraft to reflect two modifications. First, the FAA proposes to modify §§ 91.315, 91.319(a)(2), and 91.325(a) (applicable to limited category, experimental, and primary category aircraft, respectively) to change the existing language from a general prohibition on carrying persons or property for compensation or hire to more specifically identify the commercial operations that may not be conducted in these aircraft if persons or property are carried on board. These operations would include air carrier or commercial operations[47] as well as other commercial operations in which persons or property are carried. Specifically, except as provided in proposed § 91.326 (discussed more fully later in the preamble), the proposed amendments would prohibit conducting operations which: (1) require an air carrier or commercial operator certificate issued under part 119; (2) are listed in § 119.1(e);

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[47] Section 1.1 defines "Air carrier" as a person who undertakes directly by lease, or other arrangement, to engage in air transportation. Section 1.1 defines "Commercial operator" as a person who, for compensation or hire, engages in the carriage by aircraft in air commerce of persons or property, other than as an air carrier or foreign air carrier or under the authority of part 375 of this title. Where it is doubtful that an operation is for "compensation or hire", the test applied is whether the carriage by air is merely incidental to the person's other business or is, in itself, a major enterprise for profit.

(3) require management specifications for a fractional ownership program issued in accordance with subpart K of part 91; or (4) are conducted under parts 129, 133, or 137. The proposed modifications are intended to narrow the prohibition on the carriage of persons or property for compensation or hire and to clarify the FAA's intent, which is to prohibit the operation of aircraft holding certain special airworthiness certificates as air carriers, commercial operators, or otherwise carrying persons or property for hire in a manner that would require authorization from the Administrator, such as an air carrier or a commercial air tour. These aircraft are purpose-built for specific operations and do not meet the same rigorous design, build, and maintenance standards as aircraft that are eligible for use in passenger and property carrying operations for hire. Therefore, aircraft holding certain special airworthiness certificates require additional restrictions on operations for compensation or hire.

Second, in proposed § 91.326(a), the FAA proposes to codify the 2023 NDAA provision to allow certain flight training, checking, and testing in experimental aircraft without a LODA and apply this allowance to limited and primary category aircraft and establish a consistent LODA framework for limited category and experimental aircraft in § 91.326(b).

Section 91.326(a) would establish the conditions under which a person may operate these aircraft to accomplish training, checking, and testing without the need to obtain a LODA from the FAA. For those operations that cannot meet the conditions for operating without a LODA, § 91.326(b) would codify a consistent framework for requesting a LODA to conduct flight training, checking, and testing in limited category and experimental aircraft similar to the allowance currently reflected in § 91.319(h) for experimental aircraft. The FAA also proposes corresponding amendments to the general prohibitions in §§ 91.315, 91.319(a)(2), and 91.325(a) to reflect the exception in newly proposed § 91.326. Section 91.326 is discussed more fully later in this preamble.

1. Prohibited Commercial Operations

The FAA proposes to identify part 119 and other regulatory parts pertaining to specific commercial operations to clearly delineate the operations involving the carriage of persons and property for compensation and hire that are prohibited in aircraft holding certain special airworthiness certificates. This proposal balances the additional safety benefits afforded by § 91.326 for flight training, checking, and testing with the public expectation and safety mitigations necessary for operations involving aircraft holding certain special airworthiness certificates. Where there is receipt of compensation for transportation, the public expects, and the FAA demands, a higher level of safety.[48]

Importantly, transportation does not necessarily mean "from place to place," as evidenced by numerous interpretations and guidance referencing "common carriage," whereby the FAA has qualified two of the four tenets of common carriage as "(2) to transport persons or property (3) from place to place."[49] The FAA notes that, from a regulatory standpoint, transportation can simply mean conveyance for a purpose, such as a non-stop commercial air tour that takes off and lands at the same airport or carriage of an aerial photographer. Each of these examples represents an operation where a person has paid to be carried in an aircraft and which is precluded under the text of the current rule and would continue to be precluded under the proposed rule. Operations where people are carried in an aircraft, but are not paying for that conveyance, are discussed in greater detail later in this section.

Part 119 contains basic requirements that apply to each person that operates or intends to operate a civil aircraft as an air carrier or commercial operator, or both, in air commerce. This

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[48] See Advisory Circular No. 61-142, Sharing Aircraft Operating Expenses in Accordance with 14 CFR § 61.113(c), (2020).

[49] See Advisory Circular No. 61-142, Sharing Aircraft Operating Expenses in Accordance with 14 CFR § 61.113(c), (2020).

part specifies the types of operations that the FAA has determined require greater oversight, maintenance, training, and operational requirements to ensure public safety when carrying persons or property for compensation or hire. Depending on the type of operation and aircraft used, an air carrier or commercial operator conducts these operations under the operating rules in either part 121 or part 135.

Part 119 likewise excepts certain commercial operations from certification under that part. Carriage of persons or property for compensation or hire during these excepted operations will continue to be prohibited in aircraft holding certain special airworthiness certificates under the proposed modifications to the rules. Section 119.1(e) enumerates various types of commercial operations that may be conducted without an air carrier or commercial operator certificate. For example, § 119.1(e)(2) refers to nonstop commercial air tours, § 119.1(e)(4) lists various forms of aerial work operations, and § 119.1(e)(6) refers to intentional parachute drop operations. These types of commercial operations are conducted under the general operating rules in part 91. In addition to these commercial operations that may be conducted under part 91, subpart K of part 91 allows for carriage of persons or property in fractional ownership programs without part 119 certification. Other parts, such as parts 129, 133, and 137, specify regulations related to other highly-specific commercial operations that require additional oversight by the FAA but do not require part 119 certification.

Each of these parts, as they relate to carriage of persons or property for compensation or hire, contain operating rules intended to ensure the safety of those being carried, as well as the non-participating public on the ground. The restrictions on using aircraft with special

airworthiness certificates to conduct these operations are based on a safety continuum,[50] which assigns aircraft privileges based on the corresponding level of design, build, maintenance, and operational requirements. Aircraft that are built specifically for the purpose of carrying persons or property for compensation or hire are required to meet higher design and build standards, such as those required by 14 CFR parts 23, 25, 27, and 29 and appear at the highest levels of the safety continuum. These aircraft may be used for compensation or hire, and they are generally not limited to specific areas of operation or special operating rules. Aircraft used for unique commercial operations, such as part 133 rotorcraft external load operations and part 137 agricultural aircraft operations are purpose-built and have operating limitations assigned to perform those tasks safely. By contrast, aircraft holding limited category, experimental, and primary category airworthiness certificates were not built or certificated for the aforementioned purposes, nor were they contemplated for use in those regulatory frameworks. As such, these aircraft fall lower on the safety continuum than standard category aircraft. Specifically, limited aircraft fall lower on the continuum as they were built to a standard but retain special airworthiness certification since they were designed for military uses. Experimental aircraft are on the opposite end of the continuum from standard category aircraft. Experimental aircraft have not necessarily been found to meet airworthiness standards and are excepted from many of the regulatory maintenance and inspection requirements of standard category aircraft.[51] For these reasons, experimental aircraft are assigned the most restrictive operating limitations. Finally, primary category aircraft were built for personal and recreational use. As such, aircraft holding

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[50] Safety Continuum is described as the level of safety established by regulation, guidance and oversight that changes based on risk and societal expectations of safety. The safety continuum applies an appropriate level of safety from small unmanned aircraft systems to large transport category aircraft. The differing levels of safety balance the needs of the flying public, applicants and operators while facilitating both the advancement of safety and the encouragement of technological innovation. https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/air/transformation/csp/concepts

special airworthiness certificates continue to have associated regulations which limit certain activities.

The intent of this proposal is to update regulatory language to align the FAA's intent with the public's expectation for operations in aircraft with certain special airworthiness certificates, while ensuring no adverse effect on safety. To continue to ensure public safety and more clearly identify those operations prohibited in aircraft that hold certain special airworthiness certificates, the FAA proposes to list in §§ 91.315, 91.319, and 91.325, the specific operations (i.e., operations that require a part 119 air carrier or commercial operator certificate or are identified in § 119.1(e), operations that require management specifications under subpart K of part 91, operations under part 129, part 133, and part 137) that are prohibited in aircraft that hold certain special airworthiness certificates. This more specific language would replace the broad language in the current part 91 regulations that, as previously discussed, forecloses operations that the FAA did not intend to prohibit.

The FAA finds that listing out the specific operations that are prohibited rather than relying on the broad language currently reflected in §§ 91.315, 91.319, and 91.325 would better advise the regulated community on how to comply. Notably, part 119 did not exist when the FAA introduced these special airworthiness categories into its regulations. However, today part 119 is a widely used regulatory part supported by legal interpretations, FAA advisory circulars, and case law. The regulations and associated guidance will more clearly inform the owners and operators of aircraft with special airworthiness certificates that operations requiring part 119 certification as well as those commercial operations excepted from part 119 certification are not permitted in their aircraft when persons or property are carried on board for compensation. For this reason, the FAA does not believe that further discussion of the operations requiring or excepted from part 119 certification is necessary in this NPRM.

Permitting the listed operations in aircraft with certain special airworthiness certificates is not in the interest of public safety. These operations were not intended for aircraft holding certain special airworthiness certificates in the original regulations when they were developed, and they would continue to be excluded from these types of operations under the proposed rules. The FAA finds that there are sufficient aircraft that are appropriately certificated (e.g., standard and restricted category) to conduct the types of commercial operations previously described. The FAA understands the interest by owners and operators of aircraft with special airworthiness certificates to broaden their opportunities to receive compensation for the use of their aircraft; however, there is simply no compelling reason to lower the existing standard and expand the operating footprint for aircraft that hold these special airworthiness certificates.

For these reasons, the FAA proposes to revise the regulatory language of §§ 91.315, 91.319(a)(2), and 91.325(a) to clarify that, except for flight training, checking, and testing as specified in § 91.326, persons may not operate these aircraft carrying persons or property for compensation or hire in operations that require an air carrier or commercial operator certificate issued under part 119; are listed in § 119.1(e); require management specifications for a fractional ownership program issued in accordance with subpart K of part 91; or are conducted under parts 129, 133, or 137.

2. Limited Category Airworthiness Certificates (§ 91.315)

The limited category airworthiness certification was developed shortly after World War II. This certification enabled the large number of available military surplus aircraft to continue to be useful after the war, but only for limited purposes.[52] To be granted a limited category

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[52] Pilot Certificates, 14 CFR, 1946 Supp. 2132. Specifically, the Civil Air Regulations (CAR) part 09 explained that the limited category airworthiness classification was developed "for the purpose of making available to the public certain military surplus aircraft which were originally designed for the military services of the United States for combat and other specialized purposes and which experience in military service has shown to be safe for operation so long as the operation is confined to flights in which neither passengers nor cargo are carried for hire."

airworthiness certificate, the aircraft's military records could not disclose any characteristics which would render it unsafe when operated as a civil aircraft in accordance with the limitations and conditions prescribed by the Administrator.[53] Additional operating limitations were required for limited category aircraft to account for the difference in certification requirements between limited and standard category aircraft. These limitations included the prohibition on carrying passengers and cargo for hire. Eventually, the limited category regulatory language became even more restrictive to prohibit the carriage of persons, not just passengers, for compensation or hire.[54]

The history of limited category airworthiness certificates illustrates the FAA's original intent of who may be carried in these aircraft. The FAA finds that this history, in conjunction with current industry practice and ensuring consistency with other special airworthiness certificated aircraft, supports this proposal to modify the language in § 91.315 to better articulate the types of operations permitted in these aircraft. Overall, this proposed rule would increase the operational privileges afforded to limited category aircraft by enabling, with certain limitations, flight training, checking, and testing, as well as modify the generally prohibitive language to be more specific with regard to operations that cannot be conducted for compensation or hire with persons or property on board. Therefore, the FAA is proposing to amend § 91.315 to clarify that, except as provided in § 91.326 (discussed later in this section), persons may not operate these aircraft carrying persons or property for compensation or hire in operations which require an air carrier or commercial operator certificate issued under part 119; are listed in § 119.1(e); require

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[53] Pilot Certificates, 14 CFR 09.10(c), 1946 Supp. 2130.

[54] While earlier versions of § 91.315 only prohibited the carriage of "passengers" for compensation or hire, the regulation was subsequently amended to prohibit the carriage of any "persons" for compensation or hire. Compare Pilot Certificates, 14 CFR 09.10(c), 1946 Supp. 2130, note (confining use of limited category aircraft to flights "in which neither passengers nor cargo are carried for hire") with 54 FR 34284, 34309 (Aug. 18, 1989) (prohibiting "carrying persons or property for compensation or hire").

management specifications for a fractional ownership program issued in accordance with subpart K of part 91; or are conducted under parts 129, 133, or 137.

3. Experimental Airworthiness Certificates (§ 91.319)

a. Experimental Aircraft-General

Experimental aircraft do not meet the same design, build, and maintenance requirements as aircraft that hold standard airworthiness certificates. Experimental aircraft fall lower on the safety continuum than limited and primary category aircraft, as they are not necessarily built to any standard. For this reason, experimental aircraft are assigned additional operating limitations in § 91.319, to include types of operations (§ 91.319(a)(1))[55] that may be conducted and areas of operation (§ 91.319(c)) in which operations may take place.[56]

The FAA proposes to modify the broad language in § 91.319(a)(2) regarding the operation of these aircraft carrying persons or property for compensation or hire to further clarify its intent. As previously discussed, the plain language in the current regulatory text of § 91.319(a)(2) results in an outcome that the FAA finds overly restrictive. The current language results in the prohibition of operations that the experimental purposes listed in § 21.191 were specifically designed to enable.[57] For example, the experimental purpose of research and development (R&D) in § 21.191(a) was designed to accommodate testing new aircraft design concepts, new aircraft equipment, new aircraft installations, new aircraft operating techniques, or

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[55] Section 91.319(a)(1) specifies that no person may operate an aircraft that has an experimental certificate for other than the purpose for which the certificate was issued.

[56] Section 91.319(c) specifies that unless otherwise authorized by the Administrator in special operating limitations, no person may operate an aircraft that has an experimental certificate over a densely populated area or in a congested airway. The Administrator may issue special operating limitations for particular aircraft to permit takeoffs and landings to be conducted over a densely populated area or in a congested airway, in accordance with terms and conditions specified in the authorization in the interest of safety in air commerce.

[57] See § 21.191 Experimental Certificates for a list of experimental purposes.

new uses for aircraft. Often, aircraft manufacturers and equipment or component manufacturers work in tandem during development and testing to ensure safe system integration. This testing may require experts from both manufacturers to participate in the test flights. However, the plain language of § 91.319(a)(2) would prohibit the operator from carrying persons if the aircraft or system is being developed for compensation[58] because both the manufacturer and the pilot could be construed to be operating while carrying persons or property for compensation or hire. The exclusion of persons performing an essential function that is directly related to the experimental purpose unnecessarily places a burden on the operator to obtain an exemption to complete this work and was not intended to fall under the broad language of the regulation.

There are other experimental purposes where compensation may be a result of the operation. For instance, the experimental crew training purpose (§ 21.191(c)) is silent as to whether pilots (instructor or trainee) are compensated during training. Likewise, the experimental market survey purpose (§ 21.191(f)), developed specifically to demonstrate the aircraft to persons who are in a position to make a purchase decision in hopes of selling an aircraft or component (expected future economic benefit), is also silent as to whether pilots are compensated during such an operation.

The FAA finds there would be no adverse effect on safety from the proposed modified language because experimental aircraft are assigned additional operating limitations that mitigate risk. Experimental aircraft are limited by § 91.319(a)(1) in the types of operations they may perform. Section 91.319(a)(1) specifies that persons are prohibited from operating an experimental aircraft for other than the purpose for which the certificate was issued.[59] This

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[58] Compensation can come in many forms. For example, an aircraft manufacturer might be compensated by way of a Department of Defense contract to build aircraft for the military or to test certain equipment.

[59] See § 21.191 Experimental Certificates for a complete listing of all experimental purposes.

means, for example, that an experimental aircraft certificated for the purpose of R&D can only be operated to perform those R&D tests identified at the time of certification. R&D certificates have a maximum expiration date of one year. This affords the FAA an opportunity to reevaluate the validity of the proposed test. Likewise, an experimental aircraft certificated for the purpose of crew training can only be operated to train the applicant's flight crews. There is no experimental purpose which would support the carriage of persons or property as a major enterprise for profit.[60]

Furthermore, experimental aircraft are restricted by § 91.319(c) from overflight of densely populated areas unless specifically authorized by the Administrator. This prohibition mitigates risk to non-participating public on the ground. In addition, under § 91.319(i), the Administrator may impose additional operating limitations on experimental aircraft based on aircraft characteristics and associated risks. These additional operating limitations further mitigate risks associated with various hazards that may be introduced in experimental aircraft. For these reasons, the FAA sees no adverse effect on safety in the proposed modification of § 91.319(a)(2) to more accurately reflect the prohibited operations contemplated for experimental aircraft.

b. Experimental Light-Sport Aircraft (§ 91.319)

Section 91.319(e) contains specific limitations on the use of certain experimental aircraft certificated under § 21.191(i)(1).[61] The FAA proposes to modify § 91.319(e)(2) to remove the date restriction on flight training in these aircraft and direct readers to the flight training,

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[60] The § 1.1 Commercial Operator definition explains that "[w]here it is doubtful that an operation is for 'compensation or hire,' the test applied is whether the carriage by air is merely incidental to the person's other business or is, in itself, a major enterprise for profit."

[61] Section 21.191(i)(1) covers light-sport aircraft that have not been issued a U.S. or foreign airworthiness certificate and do not meet the criteria for "ultralight vehicles" provided in § 103.1.

checking, and testing in proposed § 91.326. Likewise, the FAA proposes to modify paragraph (f), regarding the leasing of aircraft issued an experimental certificate under § 21.191(i).

Before 2004, the FAA granted exemptions to permit two-seat ultralight-like aircraft, which did not meet the part 103 requirements of this chapter, to be used for compensation or hire for the purpose of flight training.[62] On July 27, 2004, the FAA issued a final rule defining light-sport aircraft to include simple, small, lightweight, low-performance aircraft. Additionally, in the 2004 final rule the FAA created a new special airworthiness certificate in the light-sport category for special light-sport aircraft (SLSA) in § 21.190 and added light-sport aircraft to the existing experimental special airworthiness certificate for experimental light-sport aircraft (ELSA) in § 21.191(i).[63]

The 2004 final rule permitted instructors to conduct flight training in these ELSA aircraft for compensation or hire until January 31, 2010, which diminished the need for the part 103 training exemptions that allowed the operation of two-seat ultralight-like aircraft that did not conform to part 103. As stated in the 2004 final rule, a significant purpose of the rule was to certificate those two-seat ultralight-like aircraft previously operated under part 103 training exemptions and those two-seat and single-seat unregistered ultralight-like aircraft operating outside of the regulations.

Specifically, SLSA regulations include aircraft manufactured according to an industry consensus standard rather than a type certificate. ELSA regulations include provisions for: (1) a temporary allowance for migration of two-seat ultralight-like aircraft that did not conform to

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[62] By regulation, an ultralight vehicle must be used or intended to be used for manned operation in the air by a single occupant and may be used or intended to be used for recreation or sport purposes only. 14 CFR 103.1(a), (b). Because two-place aircraft do not meet this requirement, they cannot be operated as ultralight vehicles under part 103.

[63] 69 FR 44881 (Jul. 27, 2004). Under § 21.191(i)(1), no experimental certificates may be issued for these aircraft after January 31, 2008.

14 CFR part 103 and were previously operated under part 103 training exemptions, (2) kit-built versions of SLSA aircraft, and (3) aircraft previously issued a special airworthiness certificate in the light-sport category under § 21.190.

When publishing the 2004 final rule, the FAA anticipated that the newly manufactured SLSA would replace the former two-seat ultralight-like aircraft that did not conform to 14 CFR part 103 (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, created provisions in existing § 91.319 to allow for an extension of the time period to permit the use of properly registered aircraft with ELSA airworthiness certificates to be used for flight training by the same owner until January 31, 2010. After January 31, 2010, ELSA aircraft were no longer permitted to be used for flight training for compensation or hire.

The FAA predicted 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 anticipated that 60 months would provide the owners of the transitioning ELSA with additional time to purchase SLSA to provide flight training 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 new SLSA has not materialized in the way that was projected, especially for two-seat aircraft used for light-sport and ultralight training. Industry production of all aircraft slowed during the projected period, resulting in lower acquisition costs of standard category aircraft that could be operated as light-sport aircraft. This caused the projected production of SLSA to no longer be considered financially viable, in many cases.

Experimental light-sport aircraft are good training aircraft for light-sport and ultralight vehicles because they may be low mass/high drag aircraft that contain a second seat that may be occupied by an authorized flight instructor. The use of ELSA as a training option for light-sport aircraft and ultralights provides an avenue for structured flight training from an FAA certificated

flight instructor. The FAA does not wish to impede individuals who want to take advantage of flight training that is relevant to the type of aircraft they operate. Additionally, the FAA recognizes the importance of availability of training aircraft for new light-sport pilots and existing pilots who are transitioning from a conventional aircraft to a low mass/high drag aircraft. While two-seat, light-sport, low mass/high drag trainers with SLSA airworthiness certificates can be found on the market for use in flight training, they do not exist in numbers that provide for widespread availability.

Given the aforementioned considerations and the delayed timeline for availability of SLSA aircraft, the FAA undertook a new rulemaking in 2014. On October 24, 2014, the FAA published a NPRM titled Removal of the Date Restriction for Flight Training in Experimental Light Sport Aircraft.[64] 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 proposed to require a LODA for persons who intended to conduct flight training for compensation or hire using ELSA. The FAA proposed this change to allow for increased availability of flight training in aircraft with similar characteristics to light-sport aircraft and ultralights. As mentioned previously, the 2004 final rule permitted training in ELSA for compensation or hire for the purpose of flight training until January 31, 2010. The NPRM proposed to remove the date restriction in § 91.319(e)(2) and add language to permit training in certain ELSA for compensation or hire through existing deviation authority provided in § 91.319(h) of this part.

For the reasons provided in the concurrently issued Withdrawal of the Removal of the Date Restriction for Flight Training in Experimental Light Sport Aircraft, the FAA is withdrawing the NPRM titled Removal of the Date Restriction for Flight Training in

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[64] 83 FR 53590 (Oct. 24, 2018).

Experimental Light Sport Aircraft, and instead is developing this rule that resolves the discrepancy more broadly for all experimental aircraft and better serves the public interest.

This proposed rule will address the parameters of flight training in experimental light-sport aircraft more comprehensively than the 2014 NPRM would have. This rule also proposes to create a consistent flight training framework for limited category and experimental aircraft. Therefore, flight training in ELSA is more appropriately incorporated into this rulemaking.

The FAA is incorporating changes to § 91.319(e) and (f) to increase the availability of light-sport aircraft for training, and aid individuals who wish to train in the type of aircraft they operate. This rulemaking proposes to change §§ 91.319(e)(2) and 91.319(f) to direct stakeholders to proposed § 91.326, which describes exceptions for flight training, checking, and testing. The FAA recognizes that training in an ELSA is beneficial for pilots to gain familiarity with the performance and handling qualities of other light-sport aircraft and ultralights.

In addition, proposed § 91.319(f)(2) would allow a person receiving flight training to lease certain ELSA for the purpose of accomplishing solo flight and practical test in accordance with a training program included in the deviation authority authorized in accordance with proposed § 91.326(b). Currently, § 91.319(f) prohibits the leasing of certain ELSA, except to tow a glider or unpowered ultralight vehicle. If the proposed rule becomes final, certain ELSA aircraft will be eligible to operate for the purpose of flight training in accordance with proposed § 91.326. Removing the leasing restriction under certain circumstances is necessary to meet the part 61 pilot certification requirements of this chapter. Because of the unique characteristics of these aircraft, the FAA has determined that training in accordance with a § 91.326(b) LODA, to include solo flight and practical tests required for pilot certification, enhances safety. Solo flight and practical tests may require leasing of the aircraft.

c. Miscellaneous Amendments

The FAA also proposes a few miscellaneous amendments to § 91.319. First, the FAA proposes to modify § 91.319(d)(3) to use "air traffic control" (ATC) in place of "control tower." This language is consistent with the other regulatory sections that reference "air traffic control" instead of "control tower."[65] Although the current requirement for notification is limited to only the control tower, if present, expanding the requirement to notify all ATC facilities with which the pilot interacts during the course of a flight, if any, increases safety by informing controllers of the experimental nature of the aircraft. This information can help ATC to understand there may be limitations associated with the aircraft. It will remain the responsibility of the operator to comply with those limitations, however notification to all ATC facilities will help controllers maintain better awareness of the aircraft to which they are providing service. If no ATC services are utilized, there is no additional requirement for notification.

The FAA also proposes to remove the current deviation authority in § 91.319(h). The proposed removal of paragraph (h) would provide additional clarity to current LODA holders and potential LODA applicants by maintaining one LODA framework under proposed § 91.326(b). Current and potential LODA holders would be directed to proposed § 91.326(b) with the introductory language in § 91.319(a). Additionally, proposed § 91.326(c) would inform current§ 91.319(h) LODA holders on the status of their LODAs if this proposal is adopted as a final rule.

4. Primary Category Airworthiness Certificates (§ 91.325)

The primary category was created in 1992 to stimulate the production of a new class of simpler personal use and recreational aircraft.[66] To achieve this intent, the primary category

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[65] For example, see §§ 65.45, 91.123, 105.13, and 170.13.

[66] 57 FR 41360 (Sept. 9, 1992).

required a simplified certification process though still requiring aircraft to be built to a design standard. At that time, the FAA indicated that flight training could be conducted in these aircraft.[67] However, as previously discussed, the broad language prohibiting operations carrying persons or property for compensation or hire precludes a flight instructor from receiving compensation while carrying a person who is receiving flight training.

For consistency with the limited category and experimental aircraft operating limitations, the FAA proposes to modify the language in § 91.325(a) and (b) and create new paragraph (c). First, the FAA proposes to modify the language in § 91.325(a) to clarify that persons may not operate these aircraft carrying persons or property for compensation or hire in operations that require an air carrier or commercial operator certificate issued under part 119; are listed in § 119.1(e); require management specifications for a fractional ownership program issued in accordance with subpart K of part 91; or are conducted under parts 129, 133, or 137. Second, to align the primary category regulatory language with the original intent at the time of its inception, the FAA proposes to modify § 91.325(b) and add new (c) to enable primary category aircraft to be used for flight training, checking, and testing without the need to obtain deviation authority.

Consistent with the limitation in current § 91.325(b), primary category aircraft are divided into two groups, with different privileges afforded to each, due to differences in maintenance requirements. The first group consists of primary category aircraft that are maintained by the pilot-owner under an approved special inspection and maintenance program. The second group consists of primary category aircraft that are maintained by part 65 certificated mechanics or authorized repair stations.[68]

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[67] 57 FR 41360 (Sept. 9, 1992).

[68] 14 CFR part 145.

Primary category aircraft that are maintained by FAA certificated mechanics or authorized repair stations fall higher on the safety continuum than those that are pilot-owner maintained. To determine the precise position of primary category aircraft on the safety continuum, and thereby determine the corresponding privileges, the FAA compares the regulatory privileges and the design, build, and maintenance requirements to those of light-sport aircraft (LSA).

LSA do not meet 14 CFR airworthiness standards. Instead, these aircraft must be designed, built, and maintained in accordance with industry consensus standards. In accordance with § 91.327(b), LSAs must be maintained by FAA certificated mechanics, authorized repairmen, or authorized repair stations. Under § 91.327(a)(2), operators of LSA are authorized to conduct flight training without a requirement to hold a LODA.[69] The FAA proposes to grant similar regulatory privileges to primary category aircraft with similar certification and maintenance requirements. To that end, the FAA proposes granting certain primary category aircraft privileges similar to those afforded to LSAs.

For these reasons, the FAA proposes to add § 91.325(c) to permit primary category aircraft maintained by FAA certificated mechanics or authorized repair stations to be operated for compensation or hire for the purposes of conducting flight training, checking, and testing without deviation authority or an exemption.

Under proposed § 91.325(c), primary category aircraft which are maintained by an FAA certificated mechanic or repair station will be enabled to be utilized for compensated flight training, checking, and testing without restriction, even when those services are broadly offered to the public. In the proposed modification to § 91.325(b), operators of primary category aircraft

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[69] Notably, as a miscellaneous amendment, the FAA is also proposing to clarify in § 91.327(a)(2) that checking and testing are also permitted.

which are maintained by a pilot-owner under an approved program who wish to receive flight training, checking, or testing are directed to § 91.326(a), which would specify the circumstances under which persons may conduct those operations. That pilot-owner is prohibited from receiving compensation, except as provided in proposed § 91.326(a). This prohibition precludes operation under a LODA. However, these pilot-owners are not precluded from exercising the privileges of proposed § 91.326(a). For these reasons, primary category aircraft would not be eligible to receive a LODA.

The FAA proposes that previously issued exemptions from § 91.325 for the purposes of flight training, checking, or testing will not be renewed or extended if the proposed rule becomes final.

5. Light-Sport Category Special Airworthiness Certificates (§ 91.327)

The FAA proposes modifying § 91.327(a)(2) to update the nomenclature for consistency with the other amendments proposed in this rulemaking. Currently, § 91.327(a)(2) authorizes flight training for compensation or hire in a light-sport category aircraft. The FAA proposes to add that a person may conduct checking and testing, in addition to the explicit permission for flight training.[70] These activities have been implicit with the language authorizing "flight training," as flight instructors are authorized to conduct certain checks, and testing is a demonstration of skills learned during training. These activities do not pose any additional safety risk beyond that associated with flight training. Further, the FAA finds value in training and testing in the aircraft that will be regularly operated. The FAA acknowledges that individuals may already utilize § 91.327(a)(2) to conduct checking and testing for compensation or hire.

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[70] *See* § 61.1 definition: "*Flight training* means that training, other than ground training, received from an authorized instructor in flight in an aircraft." Flight checking and testing are not flight training but rather are proficiency evaluations that are in most instances administered by persons other than authorized instructors; therefore, the FAA proposes to add these to explicitly permit these activities.

Therefore, this modification merely codifies existing implicit privileges. The FAA does not anticipate any substantive or practical change from the proposed addition of checking and testing in § 91.327(a)(2).

D. Flight Training, Checking, and Testing (§ 91.326(a))

As discussed, currently, §§ 91.315, 91.319, and 91.325 prohibit operating limited category, experimental, and primary category aircraft carrying persons or property for compensation or hire. Consistent with the outcome of the Warbird litigation, these regulations generally prohibit flight training, checking, and testing when compensation is provided.

In July 2021, the FAA established a streamlined process that allowed owners and flight instructors to apply for a LODA through an expedited process and accomplish certain flight training in experimental aircraft.[71] Given the language in the regulations, aircraft owners seeking to receive flight training in their own personal-use experimental aircraft, and flight instructors providing that training for compensation, applied for a LODA through the aforementioned streamlined process.[72]

However, as noted earlier, section 5604 of the 2023 NDAA contains a provision that removes the LODA requirement for flight training, testing, and checking in experimental aircraft under certain conditions. Flight training, checking, and testing that is broadly offered to the public, or that does not conform to the stipulations of the 2023 NDAA will continue to require a LODA.

Therefore, the FAA proposes an exception in § 91.326 to codify the legislation for experimental aircraft and extend what is already permissible for experimental aircraft by

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[71] *See* Notification of Policy for Flight Training in Certain Aircraft. This policy has been superseded by the 2023 NDAA.

[72] 86 FR 96493 (Jul. 12, 2021).

legislation, to other aircraft that hold certain special airworthiness certificates. Proposed § 91.326 would also more clearly outline who may receive and provide flight training, checking, and testing without deviation authority and to specify when deviation authority is required for these operations.

Specifically, the FAA proposes adding § 91.326(a) to provide an exception to the general limitations of operating an aircraft under §§ 91.315, 91.319(a)(2), and 91.325(a) for compensation or hire. Section 91.326(a) would codify the legislation to allow authorized instructors, aircraft owners, lessors, or lessees to accomplish certain flight training, checking, and testing in experimental aircraft without obtaining a LODA. The FAA also proposes to include limited category and primary category aircraft in the proposed rule, in addition to experimental aircraft, because current regulations prohibit the same training, checking, and testing for compensation in limited and primary category aircraft, and the safety justification for enabling these activities applies equally. The proposed provision would maintain the safety benefits of using standard category aircraft to accomplish most flight training, checking, and testing while acknowledging the safety benefits of permitting pilots to perform these activities in the aircraft they own or regularly operate.

The following preamble sections discuss the conditions in the legislation as set forth in proposed § 91.326(a)(1) through (3).

1. Prohibition on Authorized Instructor Providing Both Training and Aircraft (§ 91.326(a)(1))

To accomplish flight training, testing, and checking in an experimental aircraft without a LODA, section 5604(1) of the 2023 NDAA prohibits an authorized instructor from providing both the training and the aircraft when there is compensation exchanged for flight training, checking, or testing. This provision would be codified in § 91.326(a)(1) and extended to flight training, testing, and checking in limited and primary category aircraft, in addition to the

experimental aircraft addressed in the legislation. As such, any flight training, checking, or testing given by an authorized instructor in the authorized instructor's own aircraft must either be given without any compensation or must be given in accordance with a LODA. The FAA notes that compensation can be non-monetary because compensation is the receipt of anything of value.[73] For example, the FAA previously found that reimbursement of expenses such as fuel, oil, transportation, lodging, and meals, accumulation of flight time, and goodwill in the form of expected future economic benefit could be considered compensation.[74]

2. Prohibition on Broadly Offering the Aircraft as Available for Flight Training, Checking, or Testing (§ 91.326(a)(2))

To accomplish flight training, testing, and checking in an experimental aircraft without a LODA, section 5604(2) of the 2023 NDAA prohibits any person from broadly offering the aircraft as available for the activity. Proposed § 91.326(a)(2) would codify this provision and extend it to limited category aircraft and primary category aircraft that are pilot-owner maintained.

Under proposed § 91.326(a)(2), the persons listed in § 91.326(a) who wish to receive or provide training in one of these aircraft may do so without obtaining deviation authority, as long as they do not broadly offer or advertise services in those aircraft to the public. To highlight this distinction, the FAA notes that when an owner seeks to receive training in their own aircraft, there is no need for the owner to advertise or broadly offer any services to receive that flight training. An aircraft owner would not need to advertise their aircraft as available for flight training. Rather, the owner would simply hire a flight instructor of their choosing.

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[73] Legal Interpretation to Joseph Kirwan (May 27, 2005) (Compensation "does not require a profit, a profit motive, or the actual payment of funds").

[74] Legal Interpretation to John W. Harrington (Oct. 23, 1997); Blakey v. Murray, NTSB Order No. EA-5061 (Oct. 28, 2003).

This prohibition on offering the aircraft to the public forecloses flights devoid of instructional or educational value and conducted solely for entertainment or leisure under the guise of flight training. The FAA underscores the importance of pilots understanding and being familiar with the particular systems, procedures, operating characteristics, and limitations of the aircraft they will regularly operate. Data has shown that this increased understanding and familiarity results in fewer accidents over time.[75]

Importantly, advertising or broadly offering an aircraft for flight training can take many forms. In general, an entity or individual advertises its services when it communicates to the public, or a segment of the public, that flight training services are indiscriminately available to any person with whom contact is made. Currently, advertisers can promote material in more than just traditional print sources such as magazines or newspapers. Advancing technology allows individuals to reach consumers through electronic communications and internet postings. Moreover, even if an individual limits efforts to solicit flight training services to a class or segment of the general public, it may still be considered "broadly offering" its services. For example, if a person posts advertisements only on select social media websites, or within particular groups on a social media website or other internet platform, it may still be deemed to "broadly offer" its services if the advertisements express a willingness to provide flight training to all users within a class or segment of those platforms. The FAA also considers establishing a reputation of a willingness to perform a service broadly as contrary to the prohibition in the legislation and the proposed rule.[76] The FAA emphasizes that any leasing scenario remains

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[75] NTSB Safety Recommendation, A-12-28 through -39 (Jul. 12, 2012), available online: https://www.ntsb.gov/safety/safety-recs/recletters/A-12-028-039.pdf.

[76] AC 61-142, Sharing Aircraft Operating Expenses in Accordance with 14 CFR § 61.113(c), (2020), states,). "Physically holding out, without advertising, where the pilot gains a reputation of serving all, is sufficient to constitute an offer to carry all customers. There are many means by which physically holding out can take place,

subject to the prohibition on offering and advertising the aircraft for use. In any case, no person may broadly offer the aircraft or profit from the use of the aircraft and any receipt of compensation is limited to the expenses discussed in the next section.

In support of this prohibition on advertising, the FAA maintains that when aviation operations are offered broadly to the public for compensation, the public expects, and the FAA demands, a higher level of safety. This expectation is evidenced by the requirements that charter operators comply with part 135, scheduled airlines comply with part 121, and flight schools utilize standard category aircraft for flight training unless they possess a LODA. Limited category, experimental, and primary category aircraft do not meet the same certification requirements as standard category aircraft. Therefore, additional restrictions are necessary to maintain the public's expectation of safety.

theirWhile the FAA places great value on the need for pilots to understand and be familiar with the particular systems, procedures, operating characteristics and limitations of the aircraft they will operate, the FAA must also ensure public safety for services broadly offered. Paragraph (a)(2) seeks to balance these interests by imposing restrictions for flight training only outside the scope of personal use. Beyond this, flight training offered to the public is broadly available in standard category aircraft or, if deemed necessary, in a limited category or experimental aircraft in accordance with a LODA under proposed § 91.326(b), discussed later in this preamble.

3. Compensation for Use of the Aircraft (§ 91.326(a)(3))

To accomplish flight training, testing, and checking in an experimental aircraft without a LODA, section 5604(3) of the 2023 NDAA limits the type of compensation that may be received

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e.g., personal solicitation and course of conduct. A pilot's course of conduct can be sufficient to find that there has been a holding out of service to the public because the course of conduct can indicate a willingness to serve all who apply for service. The actions or conduct used to develop the reputation would be considered to be holding out."

for the use of the aircraft. Proposed § 91.326(b) would codify this provision and extend it to limited category, experimental, or primary category aircraft. Under the proposed rule (and consistent with the legislative provision for experimental aircraft), no person would be permitted to receive compensation for use of the aircraft for a specific flight during which flight training, checking, or testing was accomplished, other than expenses for owning, operating, and maintaining the aircraft. Compensation for the use of the aircraft that yields a profit for the operator is prohibited under the legislation and the proposed rule. The FAA makes this distinction to foreclose the use of aircraft holding certain special airworthiness certificates for profit without the safety mitigations provided by a LODA.

The FAA recognizes that operating an aircraft naturally incurs expenses, such as ongoing maintenance of the aircraft, fuel used during a flight, and other expenses associated with aircraft ownership. The FAA notes that the legislation ties the compensation to the costs associated with the specific flight.

When money is exchanged for transportation, the public expects, and the FAA demands, a higher level of safety for the flying public.[77] Accordingly, operations for compensation involving aircraft holding special airworthiness certificates require additional regulations to ensure public safety. The use of standard category aircraft remains broadly available for those members of the public seeking to receive flight training.

Consistent with these principles, a person may operate for the purpose of flight training in a limited category, experimental, or primary category aircraft without a LODA only when no compensation is exchanged for the use of the aircraft, other than expenses for owning, operating,

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[77] *See* legal interpretation for General Aviation Manufacturers Association, addressed to Mr. Bunce, dated Nov. 19, 2008.

and maintaining the aircraft.[78] Operations involving compensation for the use of the aircraft that yields a profit will continue to require a LODA.

E. LODA Framework (§ 91.326(b) and (c))

While the FAA maintains that, in general, limited category, experimental, and primary category aircraft should not be broadly offered for flight training, checking, and testing, the FAA finds that there is certain specialized training that may be effectively and safely accomplished in these aircraft under certain conditions. Currently, persons seeking to offer this type of flight training for compensation or hire in limited and primary category aircraft are required to obtain a grant of exemption.[79] By contrast, persons seeking to offer this type of flight training in experimental aircraft may apply for a LODA under § 91.319(h).

In § 91.326(b), the FAA proposes that any person who wants to conduct flight training, checking, or testing in limited category and experimental aircraft[80] outside the restrictions and limitations of proposed § 91.326(a) may apply for deviation authority. Flight training, checking, or testing operations that would require a LODA include, but are not limited to, receiving compensation for flight training while also receiving compensation for the use of the aircraft and/or advertising or broadly offering the use of an aircraft for flight training, checking, or testing. For example, under the proposed framework, a person who owns an aircraft holding an experimental or limited category special airworthiness certificate, such as a North American B-

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[78] *See* proposed § 91.326(a)(1) which specifies that the authorized instructor cannot provide both the training and the aircraft without a LODA.

[79] *See* Federal Register Docket FAA-2013-0506 and FAA-2017-0942 for examples of grants of exemption from § 91.315 for the purpose of flight training in limited category aircraft issued to Delaware Aviation Museum Foundation and Stallion 51 Corporation, respectively.

[80] The FAA notes that certain primary category aircraft would be excluded from § 91.326(c) because proposed § 91.325(c) would make a LODA unnecessary, as that rule would explicitly enable flight training, checking, and testing without the need for deviation authority.

25 or Curtiss P-40, would be required to hold a LODA to offer transition or proficiency training to the public.

The FAA first introduced deviation authority in a 2004 final rule[81] to allow for training that was, at that time, only available through exemption. Pursuant to § 91.319(a)(2), the 2004 final rule prohibited carrying persons or property in experimental aircraft for compensation or hire. As flight training is considered to be carrying persons for compensation or hire, the deviation authority offered in the 2004 final rule allowed for issuance of a LODA in lieu of an exemption for flight training in experimental aircraft.

NTSB Safety Recommendation A-12-035 advises the FAA to develop and publish an advisory circular, or similar guidance, for the issuance of a Letter of Deviation Authority to conduct flight instruction in an experimental aircraft, to include sample documentation and sample training materials.[82] This recommendation was in response to the NTSB's finding that providing pilots of experimental amateur-built aircraft with better access to training would enhance flight safety. In response to NTSB Safety Recommendation A-12-035, the FAA is proposing LODA framework to provide the FAA with an opportunity to evaluate the operation and impose any additional pilot qualifications and maintenance requirements necessary for safety when offering services to the public. Although § 91.319(h) authorizes the FAA to issue deviation authority for the purpose of flight training in experimental aircraft, the FAA also recognizes that, in certain circumstances, there is value in flight training in limited category aircraft. For that reason, the FAA is proposing to remove the LODA provision in § 91.319(h) and incorporate, expand, and clarify the LODA framework in proposed § 91.326(b) to apply to both limited

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[81] Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft, 69 FR 44771 (Jul. 27, 2004). In the final rule, the FAA amended § 91.319 by adding § 91.319(h) to allow deviation authority from the provisions of § 91.319(a) for the purpose of conducting flight training.

[82] NTSB Safety Recommendation, A-12-28 through -39 (Jul. 12, 2012), available online: https://www.ntsb.gov/safety/safety-recs/recletters/A-12-028-039.pdf.

category and experimental aircraft. The FAA has drafted an advisory circular describing the LODA application process and identifying the factors that the FAA will consider in determining whether a LODA should be issued. The advisory circular is available in the docket for this rulemaking for public comment concurrently with publication of this NPRM. In a 2012 safety recommendation report referencing recommendations A-12-28 through -39, the NTSB concluded that experimental amateur-built aircraft accidents involving loss of aircraft control could be reduced if more pilots received transition training.[83] Since promulgation of the 2004 final rule, FAA and industry research indicates that the training conducted under § 91.319(h) deviation authority continues to reduce accidents in experimental aircraft when conducted in accordance with the conditions and limitations of that deviation authority. Therefore, expanding this deviation authority to permit some flight training, checking, and testing in limited category aircraft is also likely to increase safety and reduce accidents in those aircraft because it would provide a greater incentive to operators of limited category aircraft to seek out and complete such training.

The FAA anticipates that using a single rule to cover deviation authority for limited category and experimental aircraft will promote a streamlined process and relieve the burden on the public to apply for an exemption for limited category aircraft. Additionally, incorporating the LODA framework from § 91.319 into proposed § 91.326(b) would make the application process consistent for limited category and experimental aircraft. The proposed § 91.326(b) framework would apply to owners, operators, and training providers who broadly offer, or receive compensation for, the use of certain aircraft for specialized flight training, checking, and testing.

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[83] NTSB Safety Recommendation, A-12-28 through -39 (Jul. 12, 2012), available online:https://www.ntsb.gov/safety/safety-recs/recletters/A-12-028-039.pdf.

Flight training, checking, or testing in limited category aircraft are currently only available by grant of exemption from the regulations. The FAA finds this burdensome and labor intensive not only for the agency but also the persons offering this specialized training. Since the 2004 final rule, § 91.319 has provided this training through deviation authority, while maintaining an equivalent level of safety. As a result, the FAA concludes that implementing the LODA framework on a broader scale will similarly support public safety, reduce administrative costs and burdens, and increase operator efficiency.

In further support of codifying a consolidated LODA framework in § 91.326(b), the FAA emphasizes the safe and successful use of LODAs under § 91.319. Under § 91.319(h), the FAA has historically granted LODAs for specialized training in experimental aircraft that could not otherwise be obtained in aircraft holding standard airworthiness certificates, e.g., model-specific training and jet upset recovery training. These LODAs have been issued to operators who demonstrate that their flight instructors, trainees, and aircraft meet specific additional requirements above those generally required to operate experimental aircraft. As currently used under § 91.319, LODAs increase public safety because they support minimum pilot qualifications, structured training curricula, and additional aircraft maintenance inspection requirements. Issuance of a LODA enables the FAA to provide oversight of training and maintenance of the aircraft and place certain restrictions on those who participate. The FAA finds it necessary to place these restrictions within the LODA to ensure safety to the public paying for training in these aircraft who may not be familiar with aircraft holding special airworthiness certificates. Evaluation of the training program ensures a structured and complete training syllabus. The operator and participant must comply with certain conditions and limitations issued with a LODA. Each operator must use aircraft-specific flight and ground training curricula. The operator must keep a record of the training given for a period of three years. Persons providing training, checking, and testing must be authorized under part 61 or part

183, as applicable, for the specific operation and must be qualified in the aircraft to be used. These parameters and oversight requirements ensure the safety of the public during these activities and operations.

1. Granting, Amending, and Cancelling a LODA (§ 91.326(b)(1) and (2))

The FAA proposes to add § 91.326(b)(1) and (2) to prescribe the manner in which the FAA may issue, cancel, and amend LODAs. Particularly, § 91.326(b)(1) clarifies that operators would be granted relief from §§ 91.315 or 91.319(a) through a LODA. In offering this deviation authority in the form of a letter, the FAA intends to model the proposed deviation authority after the current deviation authority provided in § 91.319(h) that would be superseded by proposed § 91.326(b) if adopted.

In addition, the FAA proposes to add § 91.326(b)(2) to enable the FAA to cancel or amend a LODA if it determines that the deviation holder has failed to comply with the conditions and limitations or at any time if the Administrator determines that the deviation is no longer necessary or in the interest of safety. For example, the FAA would be able to cancel a LODA for non-compliance with the terms and conditions of the LODA. Likewise, a LODA could be cancelled when a significant number of identical aircraft holding standard airworthiness certificates become available. Once an aircraft is certificated in the standard category and significant numbers are available, the need for the LODA may be unnecessary.

Under proposed § 91.326(b)(2), a LODA could also be amended for safety concerns. For example, the FAA may, when necessary, revise the conditions and limitations or require corrective action to adequately mitigate safety concerns and risk factors as they become known. In conclusion, proposed § 91.326(b)(2) affords the FAA flexibility to modify or cancel the LODA, as needed, based on changing circumstances.

2. Requirements for a LODA (§ 91.326(b)(3))

In § 91.326(b)(3), the FAA proposes to codify a timeline for operators to submit LODA applications, the form and manner requirements for submission, and the information that the applicant should provide. As proposed, an applicant must submit the request for a LODA in a form and manner acceptable to the Administrator. As set forth in the draft LODA AC, *Application and Issuance Process for a Letter of Deviation Authority Issued in Accordance with Part 91, § 91.326*, the form and manner of an application submission may include email, fax, regular mail, or in-person delivery. Consistent with the current application process under § 91.319(h), applicants may apply for a LODA by contacting the Flight Standards District Office (FSDO) nearest their primary place of business. FSDO personnel can provide the applicant with specific instructions on how to present the LODA request to that FSDO and provide the applicant with reference material and supporting information.[84] A draft of the advisory circular has been published for comment concurrently with this NPRM and is available in the rulemaking docket.

The proposed regulation would also require that the application package be submitted at least 60 days before the date of intended operations. The 60-day requirement is proposed to allow the Administrator adequate time to review stakeholder applications and supporting documents. The current § 91.319(h) LODA process has demonstrated that this is a reasonable time allowance. The FAA has determined a need for a 60-day review period to ensure the effectiveness of the LODA and the proper conditions specified within each LODA. The FAA

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[84] FAA Order 8900.1, Vol. 3, Chpt. 11, Sec. 1, Use of Aircraft Issued Experimental Certificates in Flight Training for Compensation or Hire, provides information about the issuance of a LODA for conducting flight training under § 91.319(h). Additionally, the FAA is producing a new advisory circular that would provide information, guidance, and recommendations on the application and issuance process for obtaining a LODA to operate a limited category, primary category, or experimental aircraft for compensation or hire while providing flight training, checking, and testing.

notes that not all LODA training syllabi or justifications will be identical. Therefore, the 60-day review period is intended to provide sufficient time to assess each unique application on a case-by-case basis.[85]

Proposed § 91.326(b)(3)(i) through (ix) enumerate the items an applicant would be required to include in their request for deviation authority. The FAA proposes to require this information from the applicant to evaluate the application to determine whether granting the request for a LODA would be in the interest of safety. Information required by this proposed section includes, for example, in § 91.326(b)(3)(ii), the name and contact information of the individual with ultimate responsibility for operations authorized under the LODA. Likewise, applicants must include a detailed training program demonstrating that the proposed activities would meet intended training objectives. The training program description may include a training overview, a syllabus, minimum instructor qualifications, prerequisites for persons receiving training, a description of teaching aids, special equipment, simulators, and flight training devices, as applicable, and a method for recordkeeping.[86] The FAA proposes to request this training program information from applicants to ensure that, if granted, the requested LODA would solely be used for appropriate, limited training purposes, which would in turn support safe operation of the aircraft.

Additionally, the FAA proposes § 91.326(b)(3)(viii), which specifies additional information required to be submitted by LODA applicants when formation and aerobatic training, or training leading to the issuance of an endorsement is requested. The information required to be submitted for this purpose would describe a process by which a LODA holder will

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[85] For those operators who currently hold an exemption or a LODA, section IV(E)(6) of this NPRM explains how operators would transition to a LODA issued under the proposed rule.

[86] Additional information describing the items applicants are encouraged to submit for a complete LODA application is provided in the LODA advisory circular, which has been placed in the docket for this rulemaking.

identify whether a trainee has a specific need for that training. The FAA is proposing to require LODA applicants to provide additional reasoning for conducting formation or aerobatic training, or training leading to the issuance of an endorsement because those types of training, generally, can be conducted in standard category aircraft. Because the FAA encourages training to be conducted in the aircraft which a trainee would most often operate, the additional explanation would enable the agency to determine whether granting the applicant's request for a LODA is necessary in the interest of safety. Persons with a specific need include, for example, aircraft builders, purchasers, owners, test pilots, and qualified additional pilots under AC 90-116. The aircraft used for training must have similar handling qualities and flight characteristics to the aircraft being built or flown by the trainee to be eligible. These persons will have regular access to substantially similar aircraft and would benefit from the additional training, as training can expand pilot skills that are transferrable to the aircraft they will regularly fly. Persons without a specific need can receive this training in an aircraft holding a standard airworthiness certificate.

3. Limitations in the LODA (§ 91.326(b)(4))

Currently, under § 91.319(i), the Administrator may prescribe additional limitations that the Administrator finds necessary for aircraft holding experimental airworthiness certificates. The conditions and limitations the FAA places in LODAs under the discretion provided in § 91.319(i) allow the FAA to authorize appropriate training activity not otherwise permitted by regulation while ensuring the safety of the NAS and persons and property on the ground. Historically, the FAA has included a list of general conditions and limitations related to aircraft inspection and maintenance requirements, airman qualifications, operating limitations, and training requirements in all LODAs authorizing flight training. For example, current LODAs contain a limitation that requires the operator to keep a record of the training given for a period of three years. This condition ensures that the FAA may conduct appropriate safety oversight of operations conducted under the LODA. Likewise, given the unique risks posed by aircraft with

ejection seats, LODAs have contained a requirement that trainees must complete an acceptable course of ejection seat training before training in an aircraft with an ejection seat. The FAA also includes conditions and limitations for trainees and flight instructors with regard to minimum qualifications such as certificate, ratings, and endorsements even when the trainee or flight instructor is not acting as PIC of the flight. LODA holders must comply with the conditions and limitations imposed under § 91.319 while conducting activity under the LODA unless the FAA provides relief from the conditions and limitations in the LODA.

The FAA proposes to add a provision similar to § 91.319(i) in proposed § 91.326(b)(4) to allow the Administrator to continue to prescribe additional conditions and limitations in LODAs for experimental aircraft and extend that allowance to LODAs issued for training, testing, and checking in limited category aircraft when necessary for safety. The FAA would continue to impose these safety conditions and limitations on future training, checking, and testing conducted under LODAs issued under proposed § 91.326(b). The FAA reiterates that, when training, checking, and testing can be successfully accomplished in a standard category aircraft, a LODA to conduct such training in aircraft with special airworthiness certificates is not appropriate. Where training, checking, and testing is allowed in experimental and limited category aircraft, the FAA must have a means to ensure that safety is maintained given the nature of the aircraft used. The full list of conditions and limitations is further described in the LODA Advisory Circular (AC), Table 4, "Additional Limitations," which has been placed in the docket for this rulemaking. The FAA is proposing slight modifications to the standard conditions and limitations imposed under § 91.319(i) and specifically requests comment on all of the conditions and limitations set forth in Table 4 of the AC.

4. Persons Permitted on Board During Operations Under a LODA (§ 91.326(b)(5))

The FAA proposes to add § 91.326(b)(5) to limit the persons permitted to be on board an aircraft during operations under a LODA. The airworthiness certification standards for aircraft that hold special airworthiness certificates do not rise to the level of demonstrated safety and reliability of those holding standard airworthiness certificates. Besides the instructor, designated examiner and the person receiving the training, checking, or testing, only persons deemed essential to the safe operation of the aircraft would be permitted to be carried on board the aircraft. Notably, a pilot who holds a temporary letter of authorization (LOA) to act as PIC in an experimental aircraft who also holds a flight instructor certificate is generally not authorized to conduct flight training under a LODA. Temporary LOAs are issued to a pilot to act as PIC in unique, highly specific circumstances, such as in the case of a first flight of a new or first-of-a-kind aircraft. Temporary LOAs are not issued to flight instructors for the purpose of flight training under a LODA.

In addition to authorized instructors, designated examiners, and those receiving the flight training or being checked or tested, the FAA proposes to permit persons essential for the safe operation of the aircraft to be on board during operations under a LODA. The FAA notes that, to be conducted effectively, flight training, checking, and testing operations do not require persons besides authorized flight instructors, designated examiners, those receiving flight training or being checked or tested, and other persons essential for the safe operation of the aircraft to be on board. The addition of persons not directly related to flight training, testing, checking, or operation of the aircraft may create unnecessary distraction.

However, some aircraft holding special airworthiness certificates may have unique characteristics or design features that necessitate additional persons for safety. For example, operators of certain vintage, multi-engine aircraft, like the North American B-25 or Boeing B-17,

choose to utilize persons to perform certain functions related to aircraft safety. These functions may include observing engines to monitor for smoke/malfunction, observing engine instruments to monitor for anomalies, or operation of mechanical systems that may not be in easy reach of the flightcrew. Importantly, the determination of whether a person is essential for safety would be determined based on several factors. The FAA would consider whether these persons are trained and designated by the operator for these functions and are not members of the general public. The FAA would be unlikely to consider persons unaffiliated with the operator and designated to perform essential functions "on the spot" to be genuinely performing a duty essential to safety. This precludes an operator from assigning "essential functions" to persons who do not normally participate in the operation of the aircraft. For example, a non-pilot friend in the back seat given a nominal task or observing training could be construed as a ride for hire which is not contemplated by the proposed regulation. The FAA will also consider whether the operator routinely fills a particular position to determine if it is essential. For example, if an operator routinely utilizes a crew complement of two pilots, but one day decides to put a third person on board to "monitor engines", the Administrator would likely not consider that additional person to be essential. However, if an operator routinely utilizes a trained crew chief who is present because there is emergency mechanical equipment beyond the reach of the flightcrew, like an emergency gear extension crank, the Administrator may consider that person to be essential for safety. Likewise, additional person(s) would not be allowed to be present solely to receive transportation or for recreational purposes.

The specification of the persons permitted to be carried on board the aircraft in the proposed § 91.326(b)(5) is meant to provide clarity to those applying for a LODA under § 91.326. In this regard, the list of recognized persons is exclusive. Outside of the personnel delineated in the proposed § 91.326(b)(5), the FAA does not contemplate the additional carriage

of persons on board the aircraft even with the issuance of a LODA. Such activity, therefore, would remain prohibited under this proposed rule.

5. Types of Training (§ 91.326(b)(6))

The FAA proposes to limit the types of training, testing, and checking that may be authorized under the proposed deviation authority. Currently, LODAs are issued for certain specialized types of experimental aircraft training. Aircraft holding special airworthiness certificates are not designed, built, or maintained to the same standard as those holding standard airworthiness certificates. Therefore, the FAA proposes to limit the availability of the use of experimental and limited category aircraft in flight training offered to the public by limiting the types of training available.

The types of training currently available under a LODA are limited in nature and generally contemplate only specialized training that cannot be accomplished in aircraft holding standard airworthiness certificates. For example, private pilot certification training and testing is not available for LODA training, as this can be accomplished in aircraft holding standard airworthiness certificates. Conversely, jet upset recovery training is available for LODA training because there are no standard category jet aircraft with limitations that allow for aerobatic flight.

Except in specific circumstances, LODAs should not be issued to permit flight training toward the issuance of a pilot certificate, rating, or operating privilege that can be obtained through training and testing in an aircraft with a standard category airworthiness certificate. For example, syllabi developed solely for aerobatic training or flight training that leads to the issuance of an endorsement (e.g., tailwheel or pressurized aircraft, or a complex or high performance airplane) would not be considered appropriate for issuance of a LODA. In addition, no demonstration or discovery flights would be authorized. Demonstration flights, discovery flights, sales demonstrations, introductory flights, experiential flights, and other flights not related to the flight training syllabus are not authorized under a LODA.

On the contrary, a LODA may be requested to facilitate specialized training necessary to gain skills and abilities to safely operate specific aircraft. In addition, a LODA may be used to receive training that cannot otherwise be conducted in aircraft holding a standard airworthiness certificate. For example, an applicant may utilize a LODA to participate in model-specific transition training. Similarly, an applicant may request a LODA to conduct training and testing that leads to the issuance of a specific experimental aircraft authorization, limited category type rating, rotorcraft gyroplane training at all levels, a sport pilot certificate, or sport pilot operating privilege.

The FAA includes a description of each type of training contemplated under this section in the draft LODA AC placed in the docket to this rulemaking. The FAA welcomes public comment on the types of training authorized under a LODA and the accompanying safety rationale in response to publication of the draft LODA AC.

The FAA notes that LODAs are intended to bolster specialized training in aircraft holding certain special airworthiness certificates that cannot otherwise be accomplished in aircraft holding standard airworthiness certificates. In support of this intent, as noted, LODAs will not be issued exclusively to permit aerobatic or formation training or to permit training for the sole purpose of issuance of an endorsement. However, there are certain circumstances which may warrant aerobatic training, formation training, or issuance of an endorsement as part of a broader training program. This type of training will only be available to trainees who have a specific need to receive such training. The AC published concurrently with this NPRM provides greater detail on when a person may be considered to have a “specific need” to receive this type of training, and the other corresponding requirements for airmen certification and flight characteristics.

6. Status of Current LODAs (§ 91.326(c))

The FAA proposes to add § 91.326(c) to provide clarity to those who hold a LODA issued under § 91.319(h) at the time of publication of the final rule if the proposal is adopted. In § 91.326(c)(1) and (2), the FAA proposes that any person who holds a LODA which is still active as of the date of the final rule (should this proposal be adopted) would be permitted to continue to operate under that LODA subject to its terms and conditions for 24 months after the effective date of the final rule. This proposed language would ensure that LODA holders continue to comply with the conditions and limitations under which their LODA was issued between the publication of a final rule and the termination of their LODAs granted under § 91.319(h). The FAA proposes to permit § 91.319(h) LODA holders to continue operating under those LODAs for 24 months after the effective date of a final rule because it would ensure those LODA holders have adequate time to apply for a new LODA under the § 91.326(b) framework. In § 91.326(c)(3), the FAA proposes to add that any existing LODAs issued under § 91.319(h) may be cancelled or amended at any time, as is currently provided for under § 91.319(h). Permitting those existing LODAs to be cancelled or amended at any time would enable the FAA to ensure the continuing safety of operations permitted under the existing LODAs. Finally, in § 91.326(c)(4), the FAA proposes to terminate all preexisting LODAs issued under § 91.319(h) 24 months after the effective date of a final rule. Current exemption holders would instead apply for a LODA under proposed § 91.326(b). Some operators have been granted exemptions in limited category aircraft for the purpose of offering flight training to the public. Except for exemptions issued for Living History Flight Experiences (LHFE), exemptions from § 91.315 issued for the purpose of flight training in limited category aircraft will not be renewed or extended. LHFE exemptions are granted for the purpose of providing flight experiences in certain historically-significant aircraft. These LHFE exemptions will be unaffected by this proposed rulemaking.

In anticipation of the initial volume of applications, the FAA encourages applicants to submit their LODA applications at least 180 days prior to the 24-month expiration date. Although present LODA holders are not guaranteed deviation authority under this new provision, this 180 days would help current LODA holders ensure that there is no gap in LODA coverage between their existing LODA terminating and their new LODA under § 91.326(b), should it be issued. In addition, the FAA notes that currently, LODAs are no longer required for owners and operators of experimental aircraft who comply with section 5604 of the 2023 NDAA (proposed to be codified in § 91.326(a)).

V. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563, as amended by Executive Order 14094 ("Modernizing Regulatory Review"), direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate 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. The current threshold after adjustment for inflation is $165 million, using the most current (2021) Implicit Price Deflator for the Gross Domestic Product.

In conducting these analyses, the FAA has determined that this rule: (1) will result in benefits that justify costs; (2) is not a "significant regulatory action" as defined in section 3(f) of

Executive Order 12866; (3) is not "significant" as defined in DOT's Regulatory Policy and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

A. Regulatory Evaluation

1. Summary

The FAA analyzed the costs and benefits for the provisions related to PAO and the provisions related to training, testing and checking in certain aircraft with special airworthiness certificates separately. The provisions related to PAO impose no new costs and the FAA expects the proposal will reduce the costs for pilots conducting PAO to maintain their civil certificates and ratings.[87] The provisions related to training, testing and checking impose approximately $100,000 in total one-time costs (undiscounted) over a period of two years. Roughly half of these costs stem from the requirement for the current approximately 180 LODA holders who broadly offer certain aircraft with special airworthiness certificates for training to reapply within two years of the effective date of a final rule, if this proposed rule is adopted. The other half of the costs include the time costs to the FAA which must process these applications over the first two years. However, the FAA expects the cost savings from the streamlined regulatory framework, and the safety benefits from greater access to specialized training in aircraft with certain special airworthiness certificates, to exceed the initial costs. Overall, the FAA concluded that this proposal would maintain and promote safety with minimal impact on cost.

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[87] The FAA does not maintain counts of pilots who fly PAO for federal, state and local governments and there is insufficient data for the FAA to estimate the number of pilots affected by the PAO proposal. See "How to Become a Government Pilot" in Flying Magazine by James Wynbrandt, Dec.13, 2017. Available at: https://www.flyingmag.com/how-to-become-government-pilot/ Last accessed Jul. 22, 2022.

2. Logging Flight Time in Public Aircraft Operations

The FAA requires pilots to log flight time used to meet training, aeronautical experience and recent flight experience requirements for civil pilot certificates and ratings.[88] Currently, logging of flight time in aircraft used for PAO is limited to official law enforcement flights. The FAA proposes to extend logging pilot flight time in PAO not only to forestry and fire protection services, as directed by section 517 of the FAA Reauthorization Act of 2018, but also to any PAO including operations involving national defense, intelligence missions, search and rescue, aeronautical research and biological or geological resource management. The FAA expects the rule to lower the cost for pilots conducting PAO to maintain their civil certificates and ratings. Although pilots conduct PAO outside of FAA civil certification and certain safety oversight regulations, each government entity may maintain its own certification system and requirements for pilots. For many government entities, this includes adopting the same standards as those codified in 14 CFR to ensure safety and comply with liability insurance requirements.[89] For example, the California Department of Forestry and Fire Protection (CAL FIRE), a state agency that is the largest firefighting air force in the world[90] with over 50 aircraft, requires its fixed-wing and helicopter pilots to maintain FAA commercial pilot certificates, various FAA ratings, and recent flight experience requirements.[91] Additionally, the CAL FIRE 8300 manual contains

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[88] 14 CFR 61.51(a) does not require pilots to log all flight time. Pilots are only required to record aeronautical experience used to obtain civil certificates and ratings and meet recent flight experience requirements.

[89] Wynbrandt, James W. "How to Become an Airborne Law Enforcement Pilot" in Flying, Dec. 18, 2017. Accessed Feb. 8, 2022,

https://www.flyingmag.com/how-to-become-an-airborne-law-enforcement-pilot/#:~:text=Most%20state%20and%20municipal%20ALE,aren't%20hard%20to%20find.

[90] Joiner, Stephen. "The Pilots Who Fight California's Wildfires" Smithsonian, August 2019. Accessed Feb. 15, 2022, https://www.smithsonianmag.com/air-space-magazine/wildfire-wars-180972602/.

[91] CAL Fire Petition for Exemption 14 CFR 61.51(j), Nov. 23, 2020.

specific references and obligations for compliance with FAA regulatory requirements applicable to civil operations.[92]

Allowing pilots to credit their PAO flight time would enable PAO pilots to meet FAA flight experience and recency requirements in the course of their duties, thereby avoiding costs required to accrue flight time and recent experience in civil aircraft operations. These avoided costs could include avoided travel time, flight time, fuel costs, and costs for use of a civil aircraft. Additionally, the FAA finds that recording PAO flight time will not impose additional costs because PAO pilots already record their flight time to meet the safety and insurance requirements of their employers. For this reason, the FAA proposes to allow pilots to retroactively credit PAO flight time. The FAA concludes that the proposal to allow pilots to record and credit PAO flight time will not adversely affect safety, impose any additional costs, or pose novel policy or legal issues.

3. Flight Training, Testing, or Checking for Compensation in Certain Aircraft with Special Airworthiness Certificates

Consistent with the 2023 NDAA, the proposal allows owners or operators of experimental aircraft to receive training, testing, and checking in their aircraft without a LODA, in certain circumstances. The proposed rule would extend the provision to training, testing, and checking in limited category and primary category aircraft. Additionally, the proposal moves the current LODA process for experimental aircraft in § 91.319(h) to proposed § 91.326(b) and extends the LODA process to include limited category and experimental light sport aircraft. The goal is to promote safety by making it simpler for pilots to receive elective or specialized training relevant to aircraft they regularly fly, while also ensuring effective training and maintenance

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[92] CAL Fire Petition for Exemption 14 CFR 61.51(j), Nov. 23, 2020.

standards in certain aircraft with special airworthiness certificates broadly offered for training, checking or testing, for compensation.

Overall, the FAA expects the training proposal to increase safety, clarify and simplify regulatory requirements, reduce compliance costs for operators, administrative costs for the FAA and time and travel costs for pilots seeking elective or specialized training, testing, or checking. The FAA evaluated costs and benefits against the baseline established by the "Notification of Policy for Flight Training in Certain Aircraft," published in the *Federal Register* July 12, 2021,[93] as well as the recently passed 2023 NDAA, and concluded the cost impacts are modest and the proposal poses no novel legal or policy issues.

4. Cost Savings

The FAA expects the proposal to generate cost-savings for owners or operators of certain aircraft with special airworthiness certificates who seek specialized training, testing, or checking in aircraft they own or regularly operate. Under current rules, owners or operators of limited and primary category aircraft must petition the FAA for an exemption.[94] The recently passed 2023 NDAA eliminated the LODA requirement for owners and operators of experimental aircraft receiving training in their own aircraft. The proposal in § 91.326(a) would codify the legislation with regard to LODAs for experimental aircraft and eliminate the LODA requirement for owners and operators who receive training, testing, or checking in their aircraft and pay compensation for instruction. The elimination of the exemption requirements would result in time savings for owners and operators who would no longer need to apply for an exemption. Likewise, the

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[93] 86 FR 36493 (Jul. 12, 2021), "Notification of Policy for Flight Training in Certain Aircraft." The FAA published this policy statement to establish simplified procedures for owners and operators of certain aircraft with special airworthiness certificates to obtain prior approval from the FAA for training in their own aircraft. The policy clarification also reaffirmed the need for certain operators to obtain prior approval from the FAA in the form of a LODA or exemption.

[94] Under 14 CFR 11.5, a petition for exemption is a request from an individual or entity requesting relief from a current regulation.

proposal would reduce the administrative costs at the FAA associated with evaluating and tracking exemption petitions.

5. Costs and Cost Savings for Operations Broadly Offered or Advertised

Under the proposed § 91.326(b), if an operator of experimental or limited category aircraft broadly offers or advertises flight training, checking, and testing in these aircraft, the operator must obtain prior approval from the FAA in the form of a LODA. To obtain a LODA, the operator must submit an application to the FAA that includes an aircraft-specific training program at least 60 days in advance of training operations. Under the proposed change to § 91.325, operators of certain primary category aircraft will not require a LODA and will no longer need to petition for an exemption to conduct training, testing, or checking.

Importantly, the proposed LODA requirements under § 91.326(b) are similar to the current LODA requirements under § 91.319(h) for operators of certain experimental aircraft who broadly offer their aircraft for training, testing, or checking. The FAA also proposes to terminate current training LODAs within two years of the effective date of a final rule. However, to ensure that all operations in which an aircraft with a special airworthiness certificate is "held out" for training, testing, or checking comply with the proposed requirements, holders of current exemptions and LODAs permitting these training operations will need to apply for a LODA under the proposed § 91.326(b). The FAA proposes that these exemption and LODA holders reapply within two years of the effective date of the final rule.

The FAA finds that the cost impacts of the LODA requirement for training operations in experimental and limited category aircraft "held out" broadly for training will be small relative to the current regulatory baseline. The costs and cost savings will vary across groups affected by the regulation. Therefore, the FAA evaluated the cost impacts separately for each of the identifiable interest groups expected to realize costs or savings.

Experimental aircraft operators who currently hold LODAs under § 91.319(h) to offer their aircraft broadly for training will incur the cost of reapplying for their LODA within two years of the effective date of a final rule. The FAA estimates the reapplication requirement would generate approximately $100,000 in total undiscounted costs within the first two years following the effective date of a final rule. This estimate includes the time costs to the approximately 180 current LODA holders[95] who reapply and the FAA which must process these applications.[96] [97] [98]

Under current guidance,[99] LODA applicants already submit most of the proposed requirements related to training plans, instructor qualifications, maintenance, airworthiness, and record-keeping in order to successfully obtain and maintain a LODA. For the most part, the cost of reapplying will consist of the time to gather the relevant information and submit the new application. Current LODA holders who reapply successfully will gain the benefit of broadly offering their aircraft for flight testing and checking. Current LODAs only allow operators to broadly offer or advertise their aircraft for flight training and do not permit checking or testing.

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[95] Estimate of current LODA holders under § 91.319(h) obtained from FAA Aviation Safety (AVS) line of business. AVS currently tracks active LODAs in FAA's Web-based Operations Safety System (WebOPSS).

[96] The FAA estimated 4 hours per application for the LODA holder to reapply. The undiscounted applicant cost was calculated as burden hours times average labor rate including benefits. The FAA used an average wage including benefits of $63.25, which is the average wage of flight instructors ($43.14) divided by the percent of total employer costs of employee compensation represented by wages (68.2%) to account for benefits (31.8%). Flight instructor wages are the Bureau of Labor Statistics wage estimate for commercial pilots employed at technical and trade schools. Accessed Apr. 12, 2022, https://www.bls.gov/oes/current/oes532012.htm.

[97] The undiscounted FAA cost was calculated as burden hours times average labor rate including benefits. The FAA used an average wage including benefits of $79.30, which is the wage of FG-13 Step 5 FAA aviation safety inspectors ($58.20) in the Washington-Baltimore-Arlington Metro Area in 2022 plus benefits (36.25% of wages).

[97] FAA Order 8900.1, Flight Standards Management Information System, Vol. 3, Chpt. 11, Sec. 1. Use of Aircraft Issued Experimental Certificates in Flight Training for Compensation or Hire.

[98] The undiscounted FAA cost was calculated as burden hours times average labor rate including benefits. The FAA used an average wage including benefits of $79.30, which is the wage of FG-13 Step 5 FAA aviation safety inspectors ($58.20) in the Washington-Baltimore-Arlington Metro Area in 2022 plus benefits (36.25% of wages).

[99] FAA Order 8900.1, Flight Standards Management Information System, Vol. 3, Chpt. 11, Sec. 1. Use of Aircraft Issued Experimental Certificates in Flight Training for Compensation or Hire.

Similarly, the FAA expects minimal costs for operators of limited category aircraft with exemptions to apply for a LODA prior to expiration of their exemptions. Currently, there are fewer than five active training exemptions for limited category aircraft. Moreover, these exemptions normally only have a duration of two years and the FAA expects most exemption holders to already meet most of the LODA requirements outlined in the accompanying LODA Advisory Circular. The cost will consist of the time to gather the required information and submit a new LODA application.

For future LODA applicants who seek to broadly offer their experimental or limited category aircraft for training, testing, or checking, the proposal is expected to lower compliance costs. Although the proposed LODA requirements are similar to current requirements for operators who broadly offer aircraft holding certain special airworthiness certificates for training, the simplified regulatory structure and guidance in the accompanying advisory circular is expected to make it easier for potential applicants to understand requirements and submit a successful application.

Overall, the FAA does not expect the proposal to significantly increase administrative costs at the FAA. The FAA will incur costs within the first two years of a final rule's effective date to process LODA applications from the small subset of current holders of LODAs or exemptions required to reapply under the proposal. However, in the long run the streamlined regulatory structure and guidance is expected to reduce the amount of time the FAA must spend obtaining additional information from applicants and evaluating applications.

Finally, the clarification and simplification of the LODA process for operators of aircraft with certain special airworthiness certificates who advertise or broadly offer their aircraft for training-might ultimately lower travel costs for pilots seeking the types of supplemental and specialized training envisioned under the proposed § 91.326(b). If more operators successfully apply for LODAs to broadly offer specialized training, pilots interested in receiving this optional

specialized training might not have to travel as far to receive it. For example, the FAA recognizes that training in an Experimental Light-Sport Aircraft (ELSA) is beneficial for pilots to gain familiarity with the performance and handling qualities of other light-sport aircraft and ultralights. Currently, there are some two-seat aircraft that perform and handle similarly to an ultralight, certificated as Special Light-Sport Aircraft (SLSA) available to conduct training, but not available in sufficient numbers for widespread availability. Under the proposal, the availability of ELSA for training through LODAs might enable pilots of other light-sport aircraft and ultralights to receive optional training without traveling as far, consequently, reducing fuel costs incurred from travel, as well as the time cost of travel.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–354,), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) and the Small Business Jobs Act of 2010 (Pub. L. 111–240), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term "small entities" comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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 with a reasoned explanation.

While the proposed rule would likely impact a substantial number of small entities, it would have a minimal economic impact. The PAO proposal does not impose any new requirements or costs on small entities. It fulfills the mandate in section 517 of the FAA Reauthorization Act of 2018 that directs the FAA to allow pilots of aircraft under the control of forestry and fire protection agencies engaged in PAO to credit their flight time towards FAA civil regulatory requirements. It enables pilots to log aeronautical experience and recent flight experience accumulated during PAO and to credit this experience toward FAA civil certificates and ratings.

The proposal also simplifies the regulations for operators of certain aircraft with special airworthiness certificates to obtain a LODA allowing them to broadly offer their aircraft for elective or specialized flight training, testing, and checking. Relative to current requirements to obtain a LODA or exemption for these training operations, the proposal clarifies requirements and creates uniform standards. The proposal also expands the types of aircraft eligible for flight training, testing, and checking under a LODA. The only new cost imposed by the proposal affects the holders of approximately 180 active training LODAs who will be required to reapply within two years of the effective date of a final rule. The FAA proposes to require these operators to reapply to ensure compliance with the proposed standardized LODA process. The FAA estimates that each current LODA holder would spend approximately four hours to resubmit a LODA application at an average cost of approximately $250 per LODA.[100]

The draft LODA advisory circular, published concurrently with this proposed rule, provides guidance, sample documentation, and training materials to fulfill Recommendation A-

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[100] Cost per resubmitted LODA calculated as four hours times the average labor rate, including benefits. The FAA used an average wage including benefits of $63.25, which is the average wage of flight instructors ($43.14) divided by the percent of total employer costs of employee compensation represented by wages (68.2%) to account for benefits (31.8%). Flight instructor wages are the Bureau of Labor Statistics wage estimate for commercial pilots employed at technical and trade schools. Accessed Apr. 12, 2022, https://www.bls.gov/oes/current/oes532012.htm.

12-035 of the National Transportation Safety Board (NTSB). The FAA expects the LODA advisory circular to clarify the application process, thereby making it easier for potential applicants to understand requirements and submit a successful application.

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, the FAA proposes to certify that the rule will not have a significant economic impact on a substantial number of small entities. The FAA welcomes comments on the basis of this certification.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective such as the protection of safety and does not operate in a manner that excludes imports, that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this proposed rule and determined that the proposal responds to a domestic safety objective. The FAA has determined that this proposed rule is not considered an unnecessary obstacle to trade.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 $165 million in lieu of $100 million. This proposed 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.

As part of this rulemaking action, the FAA is also requesting OMB approval for a new one-time information collection request. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these proposed information collection revisions to OMB for its review.

Summary: The proposed rule creates § 91.326(b) which establishes unified requirements for operators who broadly offer certain aircraft with special airworthiness certificates for flight training, testing, or checking to obtain prior approval from the FAA in the form of a LODA. Through the LODA process the FAA provides oversight of operators who advertise or broadly offer certain aircraft with special airworthiness certificates for elective and specialized flight training, testing, and checking. The advisory circular published concurrently with this proposed rule provides guidance, sample documentation, and training materials to fulfill Recommendation A-12-035 of the National Transportation Safety Board (NTSB). The FAA expects that the proposed § 91.326(b) and advisory circular will ensure consistency and clarify the application

process, thereby making it easier for potential applicants to understand requirements and submit a successful application.

Under the current § 91.319(h), operators of certain experimental aircraft already have the opportunity to apply for LODAs permitting them to advertise or broadly offer their aircraft for flight training, testing, or checking in exchange for compensation that includes use of the aircraft. The proposed § 91.326(b) extends the opportunity to apply for a LODA to operators of aircraft not currently eligible for LODAs under § 91.319(h). Previously ineligible aircraft that would be eligible for operations under a LODA in the proposed § 91.326(b) include experimental light-sport aircraft (ELSA) and limited category aircraft. Under current rules, operators of primary category and limited category aircraft are required to petition the FAA for an exemption[101] to broadly offer their aircraft for flight training, testing or checking. Under proposed changes to § 91.325 operators of primary category aircraft will be permitted to conduct training operations without obtaining a LODA or exemption.

In addition to extending LODA eligibility to operators of additional limited category aircraft, the proposed rule will also terminate all active § 91.319(h) LODAs for training operations for compensation in experimental aircraft within two years of the effective date of the final rule. Exemptions issued for flight training in limited and primary category aircraft will not be renewed. Exemptions issued for Living History Flight Experiences are not affected by the proposed rule. The FAA expects operators of experimental or limited category aircraft with active LODAs or exemptions,[102] respectively, who broadly offer their aircraft for training to

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[101] Under 14 CFR 11.5, a petition for exemption is a request from an individual or entity requesting relief from a current regulation. The FAA expects that the new guidance associated with the LODA process will reduce burden hours relative to petitioning for exemptions.

[102] Exemptions are typically only valid for two years. Therefore, the FAA does not expect current exemption holders to be materially affected by the requirement to apply for a LODA within 2 years. The FAA expects that the

apply for a LODA under the proposed § 91.326(b) within this time period. The FAA currently issues LODAs without expiration dates for eligible operators who broadly offer their aircraft for training. The FAA is proposing to terminate current LODAs in order to ensure that all operators are in compliance with the proposed requirements.

The burden analysis in this proposed rule only applies to holders of active LODAs who must reapply within two years of the effective date of a final rule. On February 14, 2022, the FAA published a separate notice to revise OMB Control Number 2120-0005 for information collection related to LODAs for flight training, testing, and checking in certain experimental aircraft.[103]

Use: The FAA will use the information provided by LODA applicants to promote safety for specialized flight training, testing, or checking offered to the public in experimental and limited category aircraft. The LODA framework enables the FAA to provide oversight to ensure effective training and maintenance of the aircraft.

Respondents: The FAA estimates that within the first two years of the effective date of a final rule, approximately 180 current LODA holders will reapply for LODAs.[104]

Frequency: One time per applicant. The proposed LODAs do not have an expiration period.

Annual Burden Estimate: For current LODA holders who reapply within the first two years of the effective date of a final rule, the FAA estimates a one-time burden of four hours per applicant. The FAA expects the applicant to keep the required information as a condition of the

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information and time requirements to apply for a LODA under § 91.326(c) for current exemption holders will be similar to the time and information requirements to renew an exemption, but substantially less than the time requirements to petition for a new exemption.

[103] See 87 FR 8335 (Feb. 14, 2022) "Clearance of Renewed Approval of Information Collection: General Operating and Flight Rules FAR 91 and FAR 107."

[104] The FAA Web-based Operations Safety System (WebOPSS) contains 180 LODAs for experimental aircraft under § 91.319(h).

current LODA, so the burden of reapplying will consist of the time to gather the required information and resubmit. Current LODA holders are already required to meet the recordkeeping and other proposed requirements. Therefore, the proposal creates no new annual burden for current LODA holders who reapply. The proposed LODAs do not have an expiration date, so there will be no renewal costs. The FAA assumes the burden hours per application for the FAA to process applications from current LODA holders who reapply will be four hours.

Table 1 presents the annual burden hours and undiscounted costs for the approximately 180 current LODA holders required to reapply within the first two years of the effective date of a final rule. Table 2 presents the burden estimate and costs for the Federal Government to process these LODA applications. The total undiscounted cost of burden hours for applicants and the FAA combined is estimated to be $102,642 over two years. Total discounted (at 7 percent) cost of burden hours is estimated to be $91,743 over two years. Total annualized costs at a 7 percent discount rate are $47,423.

Table 1. Total Burden Hours and Costs for Current LODA Holders who must Reapply

Year	Number of LODA Applications from Current LODA Holders[1]	Hours Per Application Current LODA Holders	Total Burden Hours	Total Cost for Applicants Undiscounted[2]
1	60	4	240	$15,181
2	120	4	480	$30,362
Total			720	$45,543
Mean			360	$22,772

LODA=Letter of Deviation Authority

1. The FAA assumes that approximately one third of current LODA holders will reapply the first year after the effective date of a final rule and the remaining LODA holders will reapply in the second year.

2. Undiscounted applicant cost calculated as burden hours times average labor rate including benefits. The FAA used an average wage including benefits of $63.25, which is the average wage of flight instructors ($43.14) divided by the percent of total employer costs of employee compensation represented by wages (68.2%) to account for benefits (31.8%). Flight instructor wages are the Bureau of Labor Statistics wage estimate for commercial pilots employed at technical and trade schools. Accessed April 12, 2022, https://www.bls.gov/oes/current/oes532012.htm.

Table 2. Total Burden Hours and Cost to Federal Government to Process Applications from Current LODA Holders who must Reapply				
Year	Number of LODA Applications from Current LODA Holders[1]	Hours Per Application FAA	Total Burden Hours FAA	FAA Cost Undiscounted[2]
1	60	4	240	$19,033
2	120	4	480	$38,066
Total	180		720	$57,098
Mean	90		360	$28,549
LODA=Letter of Deviation Authority 1. The FAA assumes that approximately one third of current LODA holders will reapply the first year after the effective date of the final rule and the remaining LODA holders will reapply in the second year. 2. Undiscounted government cost calculated as burden hours times average labor rate including benefits. The FAA used an average wage including benefits of $79.30, which is the wage of FG-13 Step 5 FAA aviation safety inspectors ($58.20) in the Washington-Baltimore-Arlington Metro Area in 2022 plus benefits (36.25% of wages).				

The agency is soliciting comments to—

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

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

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

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement to the address listed in the ADDRESSES section at the beginning of this preamble

by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Office Building, Room 10202, 725 17th Street, NW., Washington, DC 20053.

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 reviewed the corresponding ICAO Standards and Recommended Practices and has identified a difference with these proposed regulations. The FAA notes that, under proposed § 61.51(f)(4), pilots designated by a government entity as an SIC may log SIC time during authorized PAO with certain limitations. The FAA determined that this provision is inconsistent with the ICAO standard for logging. Accordingly, all pilots who log flight time under this provision and apply for an ATP certificate would have a limitation on the certificate indicating that the pilot does not meet the PIC aeronautical experience requirements of ICAO. This limitation may be removed when the pilot presents satisfactory evidence that he or she has met the ICAO standards.

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 proposed rule qualifies for the categorical exclusion identified in paragraph 5-6.6f and involves no extraordinary circumstances.

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this rulemaking 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 rulemaking under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. 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.

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

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 FAA may change this proposal in light of the comments it receives.

B. Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA), 5 U.S.C. 552, CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to the person identified in the FOR FURTHER INFORMATION CONTACT section of this document. Any commentary the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

C. Electronic Access and Filing

A copy of this notice of proposed rulemaking, all comments received, any final rule, and all background material may be viewed online at www.regulations.gov using the docket number listed above. A copy of this rulemaking will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at www.federalregister.gov and the Government Publishing Office's website at www.govinfo.gov. A copy may also be found at the FAA's Regulations and Policies website at www.faa.gov/regulations_policies.

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 in the electronic docket for this rulemaking.

List of Subjects

14 CFR Part 61

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Flight instruction, Recreation and recreation areas, Reporting and recordkeeping requirements, Security measures, Teachers.

14 CFR Part 91

Agriculture, Air carriers, Air taxis, Air traffic control, Aircraft, Airmen, Airports, Aviation Safety, Charter flights, Freight, Reporting and recordkeeping requirements, Security measures, Transportation.

The Proposed Amendment

For the reasons discussed in the preamble, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

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

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701-44703, 44707, 44709-44711, 44729, 44903, 45102-45103, and 45301-45302, and sec. 2307, Pub. L. 114-190, 130 Stat. 615 (49 U.S.C. 44703 note); and sec. 318, Pub. L. 115-254, 132 Stat. 3186 (49 U.S.C. 44703 note).

2. Amend § 61.51 by revising paragraphs (f) and (j)(4) to read as follows:

§ 61.51 Pilot logbooks.

* * * * *

(f) *Logging second-in-command flight time.* A person may log second-in-command time only for that flight time during which that person:

(1) Is qualified in accordance with the second-in-command requirements of § 61.55, and occupies a crewmember station in an aircraft that requires more than one pilot by the aircraft's type certificate;

(2) Holds the appropriate category, class, and instrument rating (if an instrument rating is required for the flight) for the aircraft being flown, and more than one pilot is required under the type certification of the aircraft or the regulations under which the flight is being conducted;

(3) Serves as second-in-command in operations conducted in accordance with § 135.99(c) of this chapter when a second pilot is not required under the type certification of the aircraft or the regulations under which the flight is being conducted, provided the requirements in § 61.159(c) are satisfied; or

(4) Is designated by a government entity as second in command when operating in accordance with paragraph (j)(4) of this section provided the aircraft used is a large aircraft or turbo-jet powered airplane; or holds or originally held a type certificate that requires a second pilot provided that:

(i) Second-in-command time logged under paragraph (f)(4) of this section may not be used to meet the aeronautical experience requirements for the private or commercial pilot certificates or an instrument rating; and

(ii) An applicant for an airline transport pilot certificate who logs second in command time under paragraph (f)(4) of this section is issued an airline transport pilot certificate with the limitation, "Holder does not meet the pilot in command aeronautical experience requirements of ICAO," as prescribed under Article 39 of the Convention on International Civil Aviation if the applicant does not meet the ICAO requirements contained in Annex 1 "Personnel Licensing" to the Convention on International Civil Aviation. An applicant is entitled to an airline transport pilot certificate without the ICAO limitation specified under this paragraph when the applicant presents satisfactory evidence of having met the ICAO requirements and otherwise meets the aeronautical experience requirements of § 61.159.

* * * * *

(j) * * *

(4) An aircraft used to conduct a public aircraft operation under 49 U.S.C. 40102(a)(41) and 40125.

* * * * *

3. Amend § 61.57 by adding paragraph (e)(5) to read as follows:

§ 61.57 Recent flight experience: Pilot in command.

* * * * *

(e) * * *

(5) Paragraphs (a) and (b) of this section do not apply to a person receiving flight training from an authorized instructor, provided:

(i) The flight training is limited to the purpose of meeting the requirements of paragraphs (a) and (b) of this section;

(ii) Notwithstanding the provisions of paragraphs (a) and (b), the person receiving flight training meets all other requirements to act as pilot in command of the aircraft; and

(iii) The authorized instructor and the person receiving flight training are the sole occupants of the aircraft.

4. Amend § 61.159 by revising paragraph (e) to read as follows:

§ 61.159 Aeronautical experience: Airplane category rating.

* * * * *

(e) An applicant who credits time under paragraphs (b), (c), and (d) of this section and § 61.51(f)(4) is issued an airline transport pilot certificate with the limitation, "Holder does not meet the pilot in command aeronautical experience requirements of ICAO," as prescribed under Article 39 of the Convention on International Civil Aviation.

* * * * *

5. Amend § 61.161 by revising paragraph (d) to read as follows:

§ 61.161 Aeronautical experience: Rotorcraft category and helicopter class rating.

* * * * *

(d) An applicant who credits time under paragraph (c) of this section and § 61.51(f)(4) is issued an airline transport pilot certificate with the limitation, "Holder does not meet the pilot in command aeronautical experience requirements of ICAO," as prescribed under Article 39 of the Convention on International Civil Aviation.

* * * * *

6. Amend § 61.193 by:

a. Revising paragraphs (a) introductory text and (a)(7); and

b. Adding paragraph (c).

The revisions and addition read as follows:

§ 61.193 Flight Instructor Privileges.

(a) A person who holds a flight instructor certificate is authorized within the limitations of that person's flight instructor certificate and ratings to conduct ground training, flight training, certain checking events, and to issue endorsements related to:

* * * * *

(7) A flight review, operating privilege, or recency of experience requirement of this part, or training to maintain or improve the skills of a certificated pilot;

* * * * *

(c) The privileges authorized in this section do not permit a person who holds a flight instructor certificate to conduct operations that would otherwise require an air carrier or operating certificate or specific authorization from the Administrator.

7. Amend § 61.413 by:

a. Revising paragraphs (a) introductory text and (a)(6); and

b. Adding paragraph (c).

The revisions and addition read as follows:

§ 61.413 What are the privileges of my flight instructor certificate with a sport pilot rating?

(a) If you hold a flight instructor certificate with a sport pilot rating, you are authorized, within the limits of your certificate and rating, to conduct ground training, flight training, certain checking events, and to issue endorsements. The kind of training and the endorsements that may be issued are those required for, or related to:

* * * * *

(6) A flight review or operating privilege for a sport pilot, or training to maintain or improve the skills of a sport pilot;

* * * * *

(c) The privileges authorized in this section do not permit a person who holds a flight instructor certificate to conduct operations that would otherwise require an air carrier or operating certificate or specific authorization from the Administrator.

PART 91—GENERAL OPERATING AND FLIGHT RULES

8. The authority citation for part 91 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506-46507, 47122, 47508, 47528-47531, 47534; Sec. 5604 of Pub. L. 117-263.

9. Revise § 91.315 to read as follows:

§ 91.315 Limited category civil aircraft: Operating limitations.

Except as provided in § 91.326 of this part, no person may operate a limited category civil aircraft carrying persons or property for compensation or hire in operations that:

(a) Require an air carrier or commercial operator certificate issued under part 119 of this chapter;

(b) Are listed in § 119.1(e) of this chapter;

(c) Require management specifications for a fractional ownership program issued in accordance with Subpart K of part 91 of this chapter; or

(d) Are conducted under parts 129, 133, or 137 of this chapter.

10. Amend § 91.319 by:

a. Revising paragraphs (a) introductory text, (a)(2), (d)(3), (e)(2) and (f); and

b. Removing and reserving paragraph (h).

The revisions read as follows:

§ 91.319 Aircraft having experimental certificates: Operating limitations.

(a) Except as provided in § 91.326 of this part, no person may operate an aircraft that has an experimental certificate—

(1) * * *

(2) Carrying persons or property for compensation or hire in operations that:

(i) Require an air carrier or commercial operator certificate issued under part 119 of this chapter;

(ii) Are listed in § 119.1(e) of this chapter;

(iii) Require management specifications for a fractional ownership program issued in accordance with subpart K of part 91 of this chapter; or

(iv) Are conducted under parts 129, 133, or 137 of this chapter.

* * * * *

(d) * * *

(3) Notify air traffic control of the experimental nature of the aircraft when utilizing air traffic services.

(e) * * *

(2) Conduct operations authorized under § 91.326 of this part.

(f) No person may lease an aircraft that is issued an experimental certificate under § 21.191(i) of this chapter, except–

(1) In accordance with paragraph (e)(1) of this section; or

(2) To conduct a solo flight in accordance with a training program included as part of the deviation authority specified under § 91.326(b) of this part.

* * * * *

(h) [Reserved]

* * * * *

11. Revise § 91.325 to read as follows:

§ 91.325 Primary category aircraft: Operating limitations.

(a) Unless provided for in this section, no person may operate a primary category aircraft carrying a person or property for compensation or hire in operations that:

(1) Require an air carrier or commercial operator certificate issued under part 119 of this chapter;

(2) Are listed in § 119.1(e) of this chapter;

(3) Require management specifications for a fractional ownership program issued in accordance with subpart K of part 91 of this chapter; or

(4) Are conducted under parts 129, 133, or 137 of this chapter.

(b) Except as provided in § 91.326(a), no person may operate a primary category aircraft that is maintained by the pilot-owner under an approved special inspection and maintenance program except—

(1) The pilot-owner; or

(2) A designee of the pilot-owner, provided that the pilot-owner does not receive compensation for the use of the aircraft.

(c) A primary category aircraft that is maintained by an appropriately rated mechanic or an authorized certificated repair station in accordance with the applicable provisions of part 43 of this chapter may be used to conduct flight training, checking, and testing for compensation or hire.

12. Add § 91.326 to subpart D to read as follows:

§ 91.326 Exception to Operating Certain Aircraft for Compensation or Hire.

(a) For purposes of §§ 91.315, 91.319, and 91.325 of this part, an authorized instructor, registered owner, lessor, or lessee may operate an aircraft for the purpose of flight training,

checking, or testing, and in the case of an experimental aircraft, for a purpose other than that for which the certificate was issued, provided—

(1) The authorized instructor is not providing both the training and the aircraft;

(2) No person advertises or broadly offers the aircraft as available for flight training, checking, or testing; and

(3) No person receives compensation for the use of the aircraft for a specific flight during which flight training, checking, or testing was received, other than expenses for owning, operating, and maintaining the aircraft. Compensation for the use of the aircraft for profit is prohibited.

(b) Except as provided in paragraphs (a) and (c) of this section, no person may conduct flight training, checking, or testing in a limited category or experimental aircraft without deviation authority issued under this paragraph.

(1) No person may operate under this section without a letter of deviation authority issued by the Administrator.

(2) The FAA may cancel or amend a letter of deviation authority if it determines that the deviation holder has failed to comply with the conditions and limitations or at any time if the Administrator determines that the deviation is no longer necessary or in the interest of safety.

(3) An applicant must submit a request for deviation authority in a form and manner acceptable to the Administrator at least 60 days before the date of intended operations. A request for deviation authority must contain a complete description of the proposed operation which establishes a level of safety equivalent to that provided under the regulations for the deviation requested, including:

(i) A letter identifying the name and address of the applicant;

(ii) The name and contact information of the individual with ultimate responsibility for operations authorized under the deviation authority;

(iii) Specific aircraft make(s), model(s), registration number(s), and serial numbers to be used;

(iv) Copies of each aircraft's airworthiness certificate, including the FAA- issued operating limitations, if applicable;

(v) Ejection seat information, if applicable;

(vi) An exemption issued under part 11, if applicable;

(vii) A detailed training program that demonstrates the proposed activities will meet the intended training objectives;

(viii) A description of the applicant's process to determine whether a trainee has a specific need for formation or aerobatic training, or training leading to the issuance of an endorsement, if those types of training are being requested; and

(ix) Any other information that the Administrator deems necessary to evaluate the application.

(4) The Administrator may prescribe additional limitations in a letter of deviation authority that the Administrator considers necessary for safety. The holder of a letter of deviation authority must comply with any limitations and conditions mandated in the deviation authority.

(5) No person other than the authorized flight instructor, designated examiner, person receiving flight training or being checked or tested, or persons essential for the safe operation of the aircraft may be on board during operations conducted under the deviation authority.

(6) The Administrator may limit the types of training, testing, and checking authorized under this deviation authority. Training, testing, and checking under this deviation authority must be conducted consistent with the training program submitted for FAA review.

(c) For deviation authority issued under § 91.319 of this part prior to [EFFECTIVE DATE OF FINAL RULE], the following requirements apply—

(1) The deviation holder may continue to operate under the letter of deviation authority until [DATE 24 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE];

(2) The deviation holder must continue to comply with the conditions and limitations in the letter of deviation authority when conducting an operation under the letter of deviation authority in accordance with § 91.326(c)(1);

(3) The letter of deviation authority may be cancelled or amended at any time; and

(4) The letter of deviation authority terminates on [DATE 24 MONTHS AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

13. Amend § 91.327 by revising paragraph (a)(2) to read as follows:

§ 91.327 Aircraft having a special airworthiness certificate in the light-sport category: Operating limitations.

(a) * * *

(2) To conduct flight training, checking, and testing.

* * * * *

Issued under authority provided by 49 U.S.C. 106(f), 44701-44703, sec. 517 of Pub. L. 115-254, and Sec. 5604 of Pub. L. 117-263 in Washington, D.C.

Wesley L. Mooty,
Acting Deputy Executive Director, Flight Standards Service.

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