



## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Parts 61 and 91

[Docket No. FAA-2023-1351; Notice No. 23-09B]

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); extension of comment period.

**SUMMARY:** This action extends the comment period for the notice of proposed rulemaking, (NPRM), *Public Aircraft Logging of Flight Time, Training in Certain Aircraft Holding Special Airworthiness Certificates, and Flight Instructor Privileges*. On June 23, 2023, the Federal Aviation Administration (FAA) published this proposed rule. The NPRM proposed to allow pilots conducting public aircraft operations (PAO) to credit their flight time towards FAA civil regulatory requirements. Additionally, the FAA proposed 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 proposed 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 proposed 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. The FAA is extending the comment period for this NPRM to allow commenters additional time to analyze the proposed rule and prepare a response.

**DATES:** The comment period for the NPRM published June 23, 2023 at 88 FR 41194 and scheduled to close on August 22, 2023, is extended until September 21, 2023.

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

- Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov) and follow the online instructions for sending your comments electronically.
- Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at (202) 493-2251.

*Docket:* Background documents or comments received may be read at [www.regulations.gov](http://www.regulations.gov) at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** 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](mailto:Jabari.Raphael@faa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Executive Summary**

On June 23, 2023, the FAA published the NPRM Public Aircraft Logging of Flight Time, Training in Certain Aircraft Holding Special Airworthiness Certificates, and Flight Instructor

Privileges.<sup>1</sup> As directed by section 517 of the FAA Reauthorization Act of 2018 (Pub. L. 115-254), the FAA proposed 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 proposed to more broadly consider all PAO for flight time. Moreover, the FAA proposed 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 second-in-command (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 National Airspace System (NAS).

The FAA also proposed to clarify recent flight experience requirements and the authorized flight training activities under part 61. The FAA proposed to add § 61.57(e)(5) to codify an exception that, in certain circumstances, would enable a person receiving flight training to act as pilot-in-command (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 proposed 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

---

<sup>1</sup> 88 FR 41194, corrected at 88 FR 44744.

primary category aircraft)<sup>2</sup> 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 regulations was the subject of recent litigation<sup>3</sup> 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, the President 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 proposed 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.

## **II. Extension of Comment Period**

Commenters were instructed to provide comments to the NPRM on or before August 22, 2023 (i.e., sixty (60) days after publication of the NPRM). Subsequently, the FAA received a request from the Experimental Aircraft Association (EAA) to extend the comment

---

<sup>2</sup> Section 21.175(b) identifies special airworthiness certificates as primary, restricted, limited, light-sport, and provisional airworthiness certificates, special flight permits, and experimental certificates.

<sup>3</sup> *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).

period an additional sixty (60) days.<sup>4</sup> EAA noted that the proposed rule was published during one of the busiest months of the year for many communities affected by this NPRM, EAA, and other industry stakeholders with the execution of and participation in EAA AirVenture Oshkosh. Additionally, EAA noted this proposed rule was published concurrently with a number of other notable FAA proposed rules that the industry and EAA community have a vested interest in and will be submitting comments on. Given the significant time commitments during the month of July, not only for EAA but also for industry stakeholders, as well as the FAA release of other important proposed rules during the same time frame, EAA requested a 60-day extension to the NPRM comment period.

The FAA grants the petitioner's request for an extension of the comment period. The FAA recognizes the importance of the proposed rule and that an extension would help commenters craft complete and thoughtful responses. However, the FAA believes that an additional thirty (30) days provides sufficient opportunity to review the NPRM and provide comments. With this extension, the comment period will now close on September 21, 2023. This will provide the public with a total of ninety (90) days to conduct its review and submit comments to the docket.

The FAA will not grant any additional requests to further extend the comment period for this rulemaking.

### **III. 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

---

<sup>4</sup> FAA-2023-1351-0007.

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.

*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](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

#### 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](http://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](http://www.federalregister.gov) and the Government Publishing Office's website at [www.govinfo.gov](http://www.govinfo.gov). A copy may also be found at the FAA's Regulations and Policies website at [www.faa.gov/regulations\\_policies](http://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.

### **IV. Extension of Comment Period**

In accordance with § 11.47(c) of title 14, Code of Federal Regulations, the FAA has reviewed the petitions for extension of the comment period for this notice. The petitioners have shown a substantive interest in the proposed policy and good cause for the extension of the comment period. The FAA has determined that an extension of the comment period for an additional thirty (30) days to September 21, 2023 is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for Notice No. 23-09 is extended until September 21, 2023.

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, DC.

**Brandon Roberts,**

*Executive Director, Office of Rulemaking.*

[FR Doc. 2023-17598 Filed: 8/16/2023 8:45 am; Publication Date: 8/17/2023]