

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 61, 63 and 65**

[Docket No. 26529; Special Federal Aviation Regulation SFAR No. 63]

RIN 2120-AE00

Relief for Participants in Operation Desert Shield/Storm

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

ACTION: Final rule.

SUMMARY: The FAA is issuing this Special Federal Aviation Regulation (SFAR) to provide certain regulatory relief to civilian and military personnel who have been or are serving in an assignment in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992. This SFAR permits Flight Standards District Offices (FSDO) to accept expired flight instructor certificates, inspection authorizations, and/or airman written test reports for meeting certain eligibility requirements under the current rules. This action is necessary because the FAA has determined that these personnel may be unable to meet the regulatory time limits of their flight instructor certificate, inspection authorization, and/or airman written test report as a result of their assignment. This action is intended to alleviate potential hardships that result from the imposition of time requirements established in the regulations on flight instructor certificates, inspection authorizations, and/or airman written test reports.

EFFECTIVE DATE: June 12, 1991.

EXPIRATION DATE: December 31, 1992.

FOR FURTHER INFORMATION CONTACT: John D. Lynch—Regulations Branch, AFS-850, General Aviation and Commercial Division, 800 Independence Ave. SW., Washington, DC 20591; Telephone: (202) 267-8150.

SUPPLEMENTARY INFORMATION**Availability of the Final Rule**

Any person may obtain a copy of this SFAR by submitting a request to the FAA, Office of Public Affairs, ATTN: APA-200, 800 Independence Avenue SW., Washington, DC 20591, or by calling the Office of Public Affairs at (202) 267-3484. Persons wanting a copy of this SFAR must identify the SFAR by asking for "Docket No. 26529; Relief for Participants in Operation Desert Shield/Storm Final Rule."

Persons interested in being placed on a mailing list for future notices should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On August 2, 1990, when Iraq invaded Kuwait, U.S. military and civilian personnel were rushed to the Middle East/Persian Gulf area or were assigned to military installations away from their home station. For the most part, these personnel had only enough time to take care of personal, immediate affairs prior to leaving. The FAA has received numerous correspondence from some of these personnel asking how they can meet the regulatory time constraints relating to the expiration of their flight instructor certificate, inspection authorization, and airman written test report while serving on assignment in Operation Desert Shield/Storm. These personnel have stated that because of their assignment, they may not be able to meet the regulatory time constraints that relate to the expiration of their flight instructor certificate, inspection authorization, and/or airman written test report.

Statement of the Problem

In response to the numerous inquiries received from civilian and military personnel serving in support of Operation Desert Shield/Storm, the FAA has determined that it needs to provide some regulatory relief to these people who are unable to comply with the regulatory time constraints of their flight instructor certificate, inspection authorization, and/or airman written test report as a result of their assignment. There may not be any FAA examiners/inspectors or facilities readily available in the area where these people were located. Also, the FAA believes that even those civilian and military personnel who are activated for Operation Desert Shield/Storm, but remain located in the United States or at a location outside the Middle East/Persian Gulf area, may find their work schedules so demanding that it would be impossible to schedule a practical test. Most of these people were located at a military base that is away from their normal training or work environment. As a result, many of these people were unable to comply with the regulatory time limits of their flight instructor certificate, inspection authorization, and/or airman written test report, as required by the appropriate Federal Aviation Regulations (FAR). Therefore, the FAA has determined the uniqueness of the

situation warrants consideration for adopting this SFAR.

History

In the past, the FAA has permitted the airline transport pilot (ATP) written test reports of § 61.39(b) to be extended beyond the 24-month expiration date. That rule allows an applicant for an ATP certificate to take the practical test for that certificate after the 24-month time period has elapsed on the written test report. However, the provisions of that rule require the applicant to (1) have been continuously employed as a pilot or as a pilot assigned to flight engineer duties since passing the written test; or (2) be participating in an approved pilot training program of a U.S. air carrier or commercial operator.

In addition, the FAA has issued grants of exemptions from § 61.39 (a)(1) and (b), when it was determined that the petitioner's situation was unique and safety would not be compromised. In every case where a grant of exemption was issued, the petition involved an extension of the expiration date of an ATP written test report for a pilot of a part 121 air carrier company and the pilot had been furloughed.

In all cases not involving the ATP written test reports, the FAA has denied all requests for exemption. The FAA has consistently stated in those denials of exemption, that, " * * * the 24-month validity period for written test reports is a reasonable one and provides some assurance that an applicant has appropriate and reasonably current aeronautical knowledge at the time of the flight test."

However, the FAA believes the situation for personnel involved in Operation Desert Shield/Storm is different. By establishing this SFAR, the FAA is not changing its past position on this issue because this SFAR is only applicable for a limited time to those civilian and military personnel serving in support of Operation Desert Shield/Storm.

In the previously issued denials of exemption on this matter, the FAA based its findings on the fact that the 24-month validity period for airman written test reports is reasonable and provide some assurance that an applicant has appropriate and reasonably current aeronautical knowledge at the time of the flight test. In the past, the FAA has received numerous inquiries from persons requesting extension of their airman written test report because they had to reschedule their practical test to a date that was after the expiration date on the written test report. While the FAA was sympathetic to the needs of

previous petitioners and realizes that there are times when practical tests have to be cancelled or rescheduled, previous petitions for extension of time were nonetheless denied for the reason cited above, and because the petitioners were free to schedule and attend practical tests on numerous occasions during the 24-month period. However, the people involved in Operation Desert Shield/Storm do not have the same opportunity to meet the time constraints of their airman written test report, because no FAA examiners/inspectors or facilities are readily available in the area and/or because their work schedules and orders may prohibit them from leaving to take the flight/practical tests.

Discussion of the Final Rule

Introduction

This final rule is based on Notice of Proposed Rulemaking (NPRM) No. 91-10 (56 FR 14292; April 8, 1991).

The FAA has determined that this SFAR is important for providing regulatory relief for those civilian and military personnel, who are required to serve in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992.

Discussion of Comments Received

Two comments favoring NPRM No. 91-10 were received from the National Business Aircraft Association, Inc. and the Air Line Pilots Association. One comment was received that questioned why the FAA had not provided similar relief in past wars. These were the only comments received in response to the NPRM.

Flight Instructor Certificate

This SFAR permits Flight Standards District Offices (FSDO) to accept an expired flight instructor certificate to show eligibility for the renewal of a person's flight instructor certificate in accordance with the provisions of § 61.197. Therefore, civilian and military personnel, who can show the kind of evidence required by this SFAR, are permitted to apply for renewal of their flight instructor certificates in accordance with § 61.197. The provisions of this SFAR apply only to those persons who complete the appropriate requirements of § 61.197 within 6 calendar months following the date of reassignment from Operation Desert Shield/Storm or by December 31, 1992, whichever date is sooner. In addition, this SFAR applies only to those personnel whose flight instructor certificates expired within the time

period from 60 days prior to their assignment to 60 days after reassignment from Operation Desert Shield/Storm. These civilian or military personnel are not permitted to exercise the privileges of their flight instructor certificate if it has expired, but are permitted to renew their flight instructor certificate in accordance with the provisions of § 61.197.

Airman Written Test Reports of Parts 61, 63, and 65

Additionally, this SFAR permits an extension of the expiration date of the airman written test reports of parts 61, 63, and 65. The provisions of this SFAR applies only to those persons who complete the required flight/practical test within 6 calendar months following the date of reassignment from Operation Desert Shield/Storm or by December 31, 1992, whichever date is sooner. Furthermore, this SFAR applies only to those personnel whose airman written test reports expired within the time period from 60 days prior to their assignment to 60 days after reassignment from Operation Desert Shield/Storm.

Inspection Authorization of Part 65

This SFAR permits FSDO's to accept an expired inspection authorization and evidence of participation in Operation Desert Shield/Storm for renewal without meeting the requirements of § 65.93. The provisions of this SFAR apply only to those persons who apply for renewal within 6 calendar months following the date of reassignment from Operation Desert Shield/Storm or by December 31, 1992, whichever date is sooner. Furthermore, this SFAR applies only to those civilian or military personnel whose inspection authorization expired within the time period from 60 days prior to assignment to 60 days after reassignment from Operation Desert Shield/Storm. These civilian or military personnel are not permitted to exercise the privileges of their inspection authorization if it has expired, but are permitted to renew their inspection authorizations in accordance with the provisions of this SFAR.

Evidence of Operation Desert Shield/Storm Participation

The FAA has determined that an assignment in support of Operation Desert Shield/Storm means a person who served a tour of duty during the time period from August 2, 1990 to December 31, 1992. An assignment in support of Operation Desert Shield/Storm may be an assignment at a location in the Middle East/Persian Gulf area or at some other location, but the

person's assignment must have been during the time period from August 2, 1990 to December 31, 1992. The 6 calendar month grace period in this SFAR will be calculated from the date shown on the official orders or documentation that reassigns the person from Operation Desert Shield/Storm. The person's flight instructor certificate, inspection authorization, and/or airman written test report must have expired within the time period from 60 days prior to the assignment date on the person's assignment orders/ documentation to 60 days following reassignment. The evidence required to substantiate an assignment must show the dates of assignment to and reassignment from support of Operation Desert Shield/Storm, and shall be one of the following:

1. Official government documents showing the person was a civilian on official duty for the United States Government in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;
2. Military orders showing the person was a member of the uniformed services assigned to duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;
3. Military orders showing the person was an active member of the National Guard or Reserve called to active duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992; or
4. A letter from the unit commander providing inclusive dates during which the person served in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992.

General

The FAA has determined that the regulatory relief provided by this SFAR will not result in a derogation of safety, because the checks and balances provided by the FAA's airman certification procedures will assure that safety is maintained. This belief is based on the fact that prior to renewing a flight instructor certificate, a person will be required to comply with the appropriate requirements of § 61.197. In the case of an expired airman written test report, a person will be required to complete a flight/practical test, in accordance with the appropriate rules of parts 61, 63, or 65, as appropriate. Furthermore, the FAA has issued instructions to its Flight Standards District Offices to monitor the situation very closely to ensure that safety is

maintained. Examiners and inspectors have been directed to give especially close attention during flight/practical tests on any showing of deficiencies in current aeronautical knowledge by those applicants qualifying under this SFAR. If a major safety problem arises, the FAA will not hesitate to take corrective action.

The FAA has determined that this SFAR will not apply to the medical certificate and pilot proficiency requirements of §§ 61.23, 61.55, 61.56, 61.57, and 61.58. The FAA has determined the requirements cited in those rules should not be waived because they involve a person's medical fitness, demonstration of piloting skills, and/or mechanic skills. The FAA does not believe requiring compliance with those rules will impose an additional hardship on our civilian and military personnel assigned to Operation Desert Shield/Storm. Upon their return to the United States, these people will be handled as any other pilot or mechanic, and compliance with these rules will not impose any additional requirement. Furthermore, the FAA believes that waiving these requirements would not be in the public interest and would have an adverse effect on safety. Therefore, those civilian and military personnel assigned to Operation Desert Shield/Storm whose medical certificate, pilot proficiency, and/or pilot recurrency requirements have lapsed will have to satisfy the normal requirements that relate to exercising the privileges of an airman certificate.

Regulatory Evaluation

Regulatory Evaluation Summary

The FAA has determined that the expected economic impact of this SFAR is so minimal that it does not warrant a full regulatory evaluation. The basis of this determination is that this SFAR imposes no costs on society because an equivalent level of safety will be maintained while providing unquantifiable benefits to certificate holders who are the subject of the rule. Since benefits exceed costs, the FAA has determined that this SFAR is consistent with the objectives of Executive Order 12291.

International Trade Impact Statement

This SFAR does not affect international trade involving aviation products or services. Therefore, the FAA certifies this SFAR will not eliminate existing or create additional barriers to the sale of foreign aviation products or services in the United States. This SFAR will not eliminate existing or create additional barriers to the sale of U.S.

aviation products and services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that entities are not disproportionately affected by Government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of entities." It is certified that this SFAR will neither have a significant negative or positive economic impact on a substantial number of small entities.

Federalism Implications

The provisions in this SFAR will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this SFAR will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons previously discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this SFAR is not major under Executive Order 12291. In addition, the FAA certifies that this SFAR will not have a significant impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This SFAR is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Furthermore, the FAA has determined that a regulatory evaluation for this SFAR is not warranted.

List of Subjects

14 CFR Part 61

Aircraft, Aircraft pilots, Airmen, Airplanes, Air safety, Air transportation, Aviation safety, Balloons, Helicopters, Rotorcraft, Students.

14 CFR Part 63

Air safety, Air transportation, Airman, Aviation safety, Safety, Transportation.

14 CFR Part 65

Airman, Aviation safety, Air transportation, Aircraft.

The Rule

In consideration of the foregoing, the Federal Aviation Administration

amends parts 61, 63, and 65 of the Federal Aviation Regulations (14 CFR parts 61, 63, and 65) as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

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

Authority: 49 U.S.C. app. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

2. By adding Special Federal Aviation Regulation (SFAR) No. [63] to read as follows:

Special Federal Aviation Regulations

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SFAR No. 63—Relief For Participants in Operation Desert Shield/Storm

Sections

1. Applicability.
2. Required documents.
3. Expiration date.

1. Applicability. Contrary provisions of part 61 notwithstanding, under the procedures prescribed herein, Flight Standards District Offices (FSDO) are authorized to accept an expired flight instructor certificate to show eligibility for the renewal of a person's flight instructor certificate in accordance with the provisions of § 61.197, or an expired written test report to show eligibility under part 61 to take a flight/ practical test, provided—

a. It is submitted by a civilian or military person who served in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

b. The person's flight instructor certificate and/or airman written test report expired within the time period from 60 days prior to assignment to 60 days after reassignment from support of Operation Desert Shield/Storm; and

c. The person complies with the appropriate requirements of § 61.197 or completes the required flight/practical test, as appropriate, within 6 calendar months following the date of reassignment from Operation Desert Shield/Storm or by December 31, 1992, whichever date is sooner.

2. Required documents. The FSDO and applicant shall include one of the following documents with the airman application, and the documents must show the dates of assignment to and reassignment from support of Operation Desert Shield/Storm:

a. Official government documents showing the person was a civilian on official duty for the United States Government in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

b. Military orders showing the person was a member of the uniformed services assigned to duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

c. Military orders showing the person was an active member of the National Guard or Reserve called to active duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992; or

d. A letter from the unit commander providing inclusive dates during which the person served in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992.

3. Expiration date. This SFAR expires December 31, 1992, unless sooner superseded or rescinded.

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

3. The authority citation for part 63 is revised to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

4. By adding Special Federal Aviation Regulation (SFAR) No. [63] to read as follows:

Special Federal Aviation Regulations

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SFAR No. 63—Relief for Participants in Operation Desert Shield/Storm

Sections

- 1. Applicability.
- 2. Required documents.
- 3. Expiration date.

1. Applicability. Contrary provisions of part 63 notwithstanding, under the procedures prescribed herein, Flight Standards District Offices (FSDO) are authorized to accept an expired written test report to show eligibility under §§ 63.33 and 63.57 to take a flight/practical test, provided—

a. It is submitted by a civilian or military person who served in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

b. The person's airman written test report expired within the time period from 60 days prior to assignment to 60 days after reassignment from support of Operation Desert Shield/Storm; and

c. The person completes the required flight/practical test within 6 calendar months following the date of reassignment from Operation Desert Shield/Storm or by December 31, 1992, whichever date is sooner.

2. Required documents. The FSDO and applicant shall include one of the following documents with the airman application, and the documents must show the dates of

assignment to and reassignment from support of Operation Desert Shield/Storm:

a. Official government documents showing the person was a civilian on official duty for the United States Government in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

b. Military orders showing the person was a member of the uniformed services assigned to duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

c. Military orders showing the person was an active member of the National Guard or Reserve called to active duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992; or

d. A letter from the unit commander providing inclusive dates during which the person served in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992.

3. Expiration date. This SFAR expires December 31, 1992, unless sooner superseded or rescinded.

PART 65—CERTIFICATION: AIRMAN OTHER THAN FLIGHT CREWMEMBERS

5. The authority citation for part 65 is revised to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

6. By adding Special Federal Aviation Regulation (SFAR) No. [63] to read as follows:

Special Federal Aviation Regulations

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SFAR No. 63—Relief for Participants in Operation Desert Shield/Storm

Sections

- 1. Applicability.
- 2. Required documents.
- 3. Expiration date.

1. Applicability. Contrary provisions of part 65 notwithstanding, under the procedures prescribed herein, Flight Standards District Offices (FSDO) are authorized to accept an expired written test report to show eligibility to take a practical test required under this

Part and/or renew an expired inspection authorization to show eligibility for renewal under § 65.93, provided—

a. The person is a civilian or military person who served in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

b. The person's airman written test report and/or inspection authorization expired within the time period from 60 days prior to assignment to 60 days after reassignment from support of Operation Desert Shield/Storm; and

c. The person completes the required practical test within 6 calendar months following the date of reassignment from Operation Desert Shield/Storm or by December 31, 1992, whichever date is sooner.

2. Required documents. The FSDO and applicant shall include one of the following documents with the airman application, and the documents must show the dates of assignment to and reassignment from support of Operation Desert Shield/Storm:

a. Official government documents showing the person was a civilian on official duty for the United States Government in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

b. Military orders showing the person was a member of the uniformed services assigned to duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

c. Military orders showing the person was an active member of the National Guard or Reserve called to active duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992; or

d. A letter from the unit commander providing inclusive dates during which the person served in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992.

3. Expiration date. This SFAR expires December 31, 1992, unless sooner superseded or rescinded.

Issued in Washington, DC, on June 6, 1991.

James B. Busey,

Administrator.

[FR Doc. 91-13931 Filed 6-7-91; 12:03 pm]

BILLING CODE 4910-13-M