

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 61**

[Docket No. 26927; Notice No. 92-8]

RIN 2120-AE11

Amendment of the Annual and Biennial Flight Review Requirements**AGENCY:** Federal Aviation Administration (FAA).**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: In this notice, the FAA proposes to delete the requirement that recreational pilots and noninstrument-rated private pilots with fewer than 400 hours of flight time (hereafter, the "affected pilots") receive 1 hour of ground and 1 hour of flight instrumentation annually. This action responds to petitions for rulemaking from the Aircraft Owners and Pilots Association (AOPA) and the Experimental Aircraft Association (EAA). In this notice the FAA also proposes to require that the biennial flight review (BFR) for all pilots consists of a minimum of 1 hour of ground instruction and 1 hour of flight instruction. This action is needed to establish a minimum standard 2-hour requirement for the BFR for all pilots. The intended effect is to eliminate inadequate flight reviews while not unduly restricting the flight instructor from requiring additional instruction. In a minor conforming change, the proposal retains in the BFR alternative means of compliance for glider pilots, which currently is contained in the annual flight review requirement.

DATES: Comments must be submitted on or before September 21, 1992.**ADDRESSES:** Comments on this notice should be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 26927, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 26927. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m. except on Federal holidays.**FOR FURTHER INFORMATION CONTACT:** Thomas Glista, Regulations Branch (AFS-850), General Aviation and Commercial Division, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8150.**SUPPLEMENTARY INFORMATION:
Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be supported by adequate documentation and accompanied by cost estimates when appropriate. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposal contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26927." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The requirement for an annual flight review for the affected pilots originated, in part, from a petition for rulemaking submitted by the National Association of Flight Instructors (NAFI) (47 FR 11026; March 15, 1982). The Federal Aviation

Administration (FAA) proposed the requirement in Notice of Proposed Rulemaking (NPRM) No. 85-13 (50 FR 26286; June 25, 1985).

In a comment to the NPRM dated October 24, 1985, the Aircraft Owners and Pilots Association (AOPA) objected to the NPRM because the FAA proposed to attach additional training requirements for already certificated pilots to NAFI's proposal for an additional pilot certificate. AOPA disputed the justification for the FAA's proposal for the annual flight review, and provided data to indicate that there was no significant difference in the accident profile of the affected pilots as compared to the profile for all pilots. However, the FAA evaluated the data in a different manner which supported the annual requirement.

The annual flight review requirement was issued in a final rule titled "Certification of Recreational Pilots and Annual Flight Review Requirements for Recreational Pilots and Non-Instrument-Rated Private Pilots with Fewer than 400 Flight Hours" [54 FR 13028; March 29, 1989]. This rule amended part 61 of the Federal Aviation Regulations (FAR), 14 CFR part 61.

By letter dated May 22, 1989, AOPA petitioned the FAA to revise FAR § 61.56(d) by deleting the annual flight review requirement. AOPA urged reconsideration of the annual flight review requirement and provided additional accident data for review.

By letter dated July 25, 1989, the Experimental Aircraft Association (EAA) also petitioned the FAA to delete the annual flight review requirement for the affected pilots.

On July 30, 1989, Secretary of Transportation Samuel Skinner spoke at EAA's annual convention in Oshkosh, Wisconsin. In response to requests from the aviation community, he promised that the FAA would review the data that was the basis and justification for requiring the annual flight review.

In further consideration of the data presented in the AOPA petition, representatives of AOPA and EAA met with FAA representatives on July 13, 1990. A record of that meeting is in Docket No. 24695. In that meeting, AOPA representatives stated that the safety data do not support singling out one particular segment of pilots for an annual flight review. EAA representatives noted the continuing decline in general aviation and commented that the general aviation public feels unduly burdened by additional rules. AOPA and EAA agreed that the current BFR requirement is vague and that standards for completion of the review vary considerably

between different instructors. In lieu of the annual flight review, AOPA and EAA expressed support for a minimum hour requirement for the BFR.

As a result of the petitions from AOPA and EAA, and further discussion of their safety data, the FAA determined that the annual flight review deserved further consideration. In order to reevaluate the rule without penalizing one group of pilots, the FAA extended the compliance date for the annual flight review until August 31, 1991, in Amendment No. 61-89 (55 FR 50312; December 5, 1990).

In addition, the FAA has received comments on the BFR from persons participating in the public hearings held in conjunction with the FAR parts 61, 141, and 143 Review. Individuals commented that the current BFR requirement is vague and ineffective. There were numerous requests at these hearings to standardize the review and for the FAA to provide additional guidance on the conduct of the BFR. Some commenters stated that the FAA should publish guidelines but not in the form of additional regulations. Other commenters stated that a minimum requirement for ground and flight instruction should be incorporated into the rule.

FAA Analysis of the Annual Flight Review

In March 1990, the FAA completed a preliminary reevaluation of the data that was the basis for adopting the annual flight review requirement for the affected pilots (§ 61.56(d)). This data showed the private pilot accident totals from 1976 to 1981; it was organized into fatal and nonfatal accidents, and by pilot age and total flight hours. Accident totals were provided for the various experience levels in 100-hour increments (through 999 hours).

Because the total number of accidents was higher in each of the first four 100-hour increments than in any of the other increments, the 400-hour pilot time level was selected as the time level for the annual flight review requirement. However, the FAA determined on reevaluation that the data did not indicate whether the higher accident totals for these subgroups reflected higher accident rates per pilot, or greater activity levels (i.e., exposure), or a combination of these factors.

Also, the accident data did not distinguish between instrument-rated and noninstrument-rated pilots. Thus, it was impossible to determine the extent to which relatively inexperienced instrument-rated pilots may have contributed to the accident totals.

Based on its reevaluation, the FAA concluded that the data used in the development of the annual flight review rule was insufficient to justify imposing this requirement on the affected pilots. Therefore the FAA proposes to delete it in this notice.

As mentioned above, the FAA currently is conducting a review of parts 61, 141, and 143. In connection with this review, the FAA is completing a thorough assessment of the skills that are needed for the different types of pilot certificates, ratings, and operations.

The FAA's Office of Safety Analysis has initiated three interrelated studies on general aviation safety.

The first study addresses requirements for general aviation exposure (activity) data. When combined with accident data, reliable exposure data will help the FAA develop rates of specific types of accidents and identify relative risks.

Another study concerns developing measures of pilot proficiency; the purpose of this project is to examine the relationships between accident rates and measures such as pilot recent and total flight time, age, certificate level, and ratings to determine the impact of these factors on safety performance.

The last study involves a detailed analysis of accident causes to help evaluate the need for remedial actions in various types of flying activity.

Preliminary work on all three studies was accomplished during FY91.

FAA Analysis of Biennial Flight Review Requirements

Currently, the flight review requirements of § 61.56 are very general. Section 61.56(a) requires a review of the current general operating and flight rules of part 91 of the FAR and a review of those maneuvers and procedures which, at the discretion of the person giving the review, are necessary for the pilot to demonstrate the safe exercise of the privileges of the pilot certificate. This requirement could be interpreted in many different ways. At one extreme, a flight review could consist of a short discussion during preflight and a 10-minute flight with one takeoff and one landing. At the other extreme, a flight review could consist of a multihour oral and flight review of all of the maneuvers and procedures listed in the practical test standards for each certificate and rating the applicant holds.

To assist the general aviation public in maintaining proficiency, the FAA created the "Pilot Proficiency Award Program" (Wings) to provide pilots with the opportunity to establish and participate in a personal recurrent

training program. This voluntary program has been very successful in reducing the number of accidents for participating pilots. The Report of the Safety Review Task Force of the Federal Aviation Administration Flight Safety Program, August 1985, stated that the Wings program has an outstanding record. Only 81 accidents, with a total of 10 fatalities, have occurred among the group of 45,000 airmen who have participated in the program since 1979. In addition, statistics show that participation in the Wings program has increased 42 percent between 1986 and 1988. This trend indicates that the general aviation public recognizes the need for recurrent training. Amendment 61-490 (56 FR 11308; March 15, 1991) amended § 61.56 to state that persons who have satisfactorily completed one or more phases of an FAA-sponsored pilot proficiency award program need not accomplish the flight review.

In spite of this recognition of the need for recurrent training by the majority of general aviation pilots, the FAA has determined that there is a segment of the pilot population which may not receive a satisfactory flight review. Therefore, a minimum of 1 hour of ground instruction and 1 hour of flight instruction should be required biennially to ensure that each person receiving a BFR receives a satisfactory review commensurate to the certificates and ratings held.

Requiring a minimum of 1 hour of flight instruction and 1 hour of ground instruction will help to eliminate inadequate flight reviews while not restricting the flight instructor from requiring additional instruction if, in his or her opinion, it is needed to ensure that the pilot is capable of exercising the privileges of the certificates and ratings held.

The FAA assumes that 1 hour of flight instruction and 1 hour of ground instruction is the average duration of a flight review for pilots who have recently and consistently been exercising the privilege of their certificates and ratings. This is consistent with the recommendations of Advisory Circular AC-61-98A, described below. The FAA realizes that there are occasions when a flight review will require more than 1 hour each of ground and flight instruction. For example, if the pilot being reviewed has not exercised the privileges of the certificate for an extended period (i.e., more than 2 years), it is very likely that the flight instructor would require the pilot to receive more than 1 hour each of ground and flight instruction. Thus, this minimum requirement of 1 hour each of

ground and flight instruction does not restrict the flight instructor from requiring additional instruction, as needed, depending on the experience and skills of the pilot.

In addition, in response to comments that the FAA should publish guidelines concerning maneuvers and procedures, the FAA has developed Advisory Circular AC-61-98A, Currency and Additional Qualification Requirements for Certified Pilots. The purpose of AC-61-98A, in part, is to provide information for certified pilots and flight instructors to use in complying with the flight review required by § 61.56. The Advisory Circular recommends that all flight reviews consist of a minimum of 1 hour of flight instruction and 1 hour of ground instruction for all pilots. The FAA has determined, however, that setting specific maneuvers and procedures requirements in the rules would unduly restrict a flight instructor's discretion in reviewing an individual's ability to safely exercise the privileges of the certificates and ratings held. Due to different pilot abilities, experience levels, type of operation, certificates, ratings, and aircraft, the flight review needs to be tailored to the individual pilot. Thus, guidance in the form of an AC will supplement this proposed rule and will continue to provide a useful reference source in putting together a BFR appropriate for the person receiving the review. The goals and objectives of the BFR still must be met in that the flight instructor must be able to determine whether the individual being reviewed can safely exercise the privileges of the certificates and ratings held.

Other, Conforming Changes

On October 5, 1989, the FAA issued an amendment to the recreational pilot rule [Amendment No. 61-86; 54 FR 41234]. This amendment, in part, modified the annual flight review requirements for certain glider-rated private pilots. The amendment allowed glider-rated private pilots to substitute three instructional flights in a glider, each of which included a 360-degree turn, in lieu of the 1 hour of flight instruction. That change resulted, in part, from comments submitted by the Soaring Society of America on the requirements for an annual review contained in the recreational pilot rule.

The FAA has determined that the proposed change to the BFR should provide glider-rated pilots the same option for complying with the 1 hour each of ground and flight instruction as provided in Amendment No. 61-86 for glider-rated private pilots receiving the annual flight review. In order to

incorporate this alternative means of compliance for glider pilots into the proposed change to the BFR, the amendatory language that allows this alternative means of compliance is retained in § 61.56(b).

Economic Evaluation

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if benefits to society for each regulatory change outweigh potential costs. Accordingly, the FAA has prepared a detailed preliminary economic evaluation of this proposal and placed it in the docket. The evaluation identifies and analyzes both the quantifiable and nonquantifiable economic effects of the proposal. Based on the results of its investigation, the FAA has concluded that this proposal is cost-beneficial.

This section contains a summary of the benefits and costs analyzed in the preliminary regulatory evaluation. In addition, it includes an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act and an international trade impact assessment. If more detailed economic information is desired than is contained in this summary, the reader is referred to the full preliminary regulatory evaluation contained in the docket.

A pilot who has not satisfactorily completed an FAA-sponsored pilot proficiency award program, or a pilot proficiency check for a certificate, rating, or operating privilege within the past 2 years currently is required to receive a BFR. There may be cases where a BFR consists of an inadequate review that takes only a few minutes and other cases where a BFR consists of a multihour review. The FAA assumes, however, that most flight instructors are following the recommendations of AC 61-98A and are conducting BFRs that consist of 1 hour of ground instruction and 1 hour of flight instruction.

Since this proposal would merely codify in the rule what already is outlined in the AC and is generally accepted as standard practice, the FAA has concluded it has minimal associated costs.

The estimated benefits of the proposed rule are the cost savings from the elimination of the annual flight review requirement for the affected pilots. The FAA estimates that in 1992, approximately 129,800 pilots would be affected by the elimination of this requirement at a cost savings of \$6.4 million in 1992. These estimated cost savings were calculated using representative rental rates for flight instruction and ground instruction by

category of aircraft. Based on the estimate of the affected number of pilots from 1992 to 2001, the total estimated cost savings would be \$65 million, or \$44 million discounted at 10 percent over the period. The cost associated with this rule, resulting from requiring additional time in flight or ground instruction for some pilots as part of the BFR, are believed to be minimal since most pilots already meet the standards contained in the AC. In addition, because the data used in the development of the annual flight review were insufficient to justify imposing this requirement on the affected pilots, the FAA proposes to delete it in this notice. Therefore, the FAA has concluded that the proposed rule is cost-beneficial.

International Trade Impact Analysis

This proposed rule would have a negligible impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the U.S. The proposed rule primarily affects recreational pilots and noninstrument-rated private pilots with fewer than 400 hours of flight time, not businesses involved in the sale of aviation products or services.

Regulatory Flexibility Determination

The proposed rule would not have a significant economic impact, positive or negative, on small entities. Pilots, rather than business entities, would be affected by this proposed rule. Where a noninstrument-rated private pilot with fewer than 400 hours is also the sole proprietor of a small business, and exercises the privileges of his or her certificate in operations that are incidental to that business, the proposed rule would have a negligible impact. The FAA estimates that these pilots would save between \$98 and \$185 every other year, depending on the aircraft they used for their annual reviews.

Federalism Impact

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

Conclusion

This notice proposes to amend § 61.56 of the FAR by deleting the annual flight review requirement for the affected

pilots that was established in the "Certification of Recreational Pilots and Annual Flight Review Requirements for Recreational Pilots and Noninstrument-Rated Private Pilots with Fewer than 400 Flight Hours" final rule.

For the reasons discussed in the preamble, and based on the findings in the initial Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this final rule is not major under Executive Order 12291. In addition, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule is considered significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A draft regulatory evaluation of this rule, including an initial Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 61

Aeronautical knowledge, Aviation safety, Cross-country flight privileges, Eligibility requirements, Limitations, Operational experience, Student pilots.

The Proposed Amendment

Accordingly, part 61 of the Federal Aviation Regulations (14 CFR part 61) is proposed to be amended 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. Appendix 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

2. Section 61.56 is revised to read as follows:

§ 61.56 Flight review.

(a) A flight review consists of a minimum of 1 hour of flight instruction and 1 hour of ground instruction. The review must include—

(1) A review of the current general operating and flight rules of Part 91 of this chapter; and

(2) A review of those maneuvers and procedures which, in the discretion of the person giving the review, are necessary for the pilot to demonstrate the safe exercise of the privileges of the pilot certificate.

(b) Glider pilots may substitute a minimum of three instructional flights in a glider, each of which includes a 360-degree turn, in lieu of the 1 hour of flight instruction required in paragraph (a) of this section.

(c) Except as provided in paragraphs (d) and (e) of this section, no person may act as pilot-in-command of an aircraft unless, since the beginning of the 24th calendar month before the

month in which that pilot acts as pilot in command, that person has—

(1) Accomplished a flight review given in an aircraft for which that pilot is rated by an appropriately rated instructor certificated under this part or other person designated by the Administrator; and

(2) A logbook endorsed by the person who gave the review certifying that the person has satisfactorily completed the review.

(d) A person who has, within the period specified in paragraph (c) of this section, satisfactorily completed a pilot proficiency check conducted by the FAA, an approved pilot check airman, or a U.S. Armed Force, for a pilot certificate, rating, or operating privilege, need not accomplish the flight review required by this section.

(e) A person who has, within the period specified in paragraph (c) of this section, satisfactorily completed one or more phases of an FAA-sponsored pilot proficiency award program need not accomplish the flight review required by this section.

(f) The requirements of this section may be accomplished in combination with the requirements of § 61.57 and other applicable recency requirements at the discretion of the instructor.

Issued in Washington, DC, July 14, 1992

Thomas C. Accardi,

Director, Flight Standards Service.

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