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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. FAA-2002-11666; Amendment No. 61- 107]

RIN 2120- AH76

Picture Identification Requirements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This rule revises the pilot certificate requirements to require a person to carry a photo identification acceptable to the Administrator when exercising the privileges of a pilot certificate. Additionally, this final rule requires a pilot certificate holder to present a photo identification when requested by the Administrator, an authorized representative of the National Transportation Safety Board (NTSB) or Transportation Security Administration (TSA), or a law enforcement officer. These measures address security concerns regarding the identification of pilots.

DATES: This final rule is effective [insert publication date]. You may send your comments to reach us on or before [insert date 30 days after date of publication in the Federal Register.]

ADDRESSES: Mail or hand deliver your comments to Docket Management System, Attention: Docket No. FAA-2002-11666, U.S. Department of Transportation, 400 Seventh Street, SW (Nassif Building), Room 401, Plaza Level, Washington, DC 20590-0001. Send electronic comments to: http://dms.dot.gov

FOR FURTHER INFORMATION CONTACT: John D. Lynch, Certification Branch, AFS-840, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone No. (202) 267-3844.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, federalism, or security impacts that might result from this rule. The most helpful comments reference a specific portion of the rule, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

All comments received will be filed in the docket. The FAA will develop a report that summarizes each substantive public contact with the FAA personnel concerning this rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the ADDRESSES section of this preamble between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the ADDRESSES section.

We will consider all comments we receive on or before the closing date for comments. We may change this rule based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments, include with your comments a pre-addressed, stamped postcard that identifies the docket number. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search).

(2) On the search page type in the last five digits of the Docket number of this notice (10910). Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's web page at http://www.faa.gov/avr/armhome.htm or the Federal Register's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and

advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If your organization is a small entity and you have a question, contact your local FAA official. If you don't know how to contact your local FAA official, you may contact the Program Analyst Staff, Office of Rulemaking, ARM-27, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC 20591, telephone (888) 551-1594. Internet users can find additional information on SBREFA on the FAA's web page at www.faa.gov and may send electronic inquiries to the following internet address: 9-AWA-SBREFA@faa.gov.

Background

The Aviation and Transportation Security Act (ATSA), Public Law 107-71, enacted on November 19, 2001, requires the Under Secretary of Transportation for Security ("Under Secretary") to consider a requirement for a photo identification pilot certificate. In relevant part, § 109(a) of ASTA provides that the Under Secretary in consultation with the Administrator of the Federal Aviation Administration, may "consider whether to require all pilot licenses to incorporate a photograph of the license holder and appropriate bio-metric imprints." The Under Secretary is required to report annually to Congress on the progress in evaluating and taking such actions.

In addition, § 129 of ATSA amends 49 U.S.C. 44703(g), by adding the phrase "combating acts of terrorism" as an additional purpose for revising the FAA airman certification system. The FAA now must consider terrorism as a factor in addition to the

needs of pilots and officials responsible for enforcing drug-related laws when making modifications to the airman certification system.

Congress first mandated modification of the airman certification system in the Federal Aviation Administration Drug Enforcement Assistance Act of 1988 (DEA Act) (Subtitle E of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690)) with the objective of assuring positive and verifiable identification of each person applying for or holding a pilot certificate. The DEA Act was intended to assist Federal, State, and local agencies involved in the enforcement of the nation's drug laws. In response to the DEA Act, the FAA issued a Notice of Proposed Rulemaking on March 12, 1990 (55 FR 9270). The proposed rule would have required a two part pilot certificate; part A was an Airman Identity Card and part B would include all ratings and limitations. This new certificate would be issued to private, commercial, and airline transport pilots. As proposed, the Airman Identity Card portion of the pilot certificate would be non-forgeable and contain a photograph of the pilot, his or her signature, address, and identification number. In addition, the certificates would be machine-readable by equipment in use by the United States Customs Service, and have a variety of other security features. The FAA's proposed rule to modify the airman certification system has not been issued as a final rule by the FAA.

Petition from the Aircraft Owners and Pilots Association

By letter, dated February 21, 2002, Mr. Philip Boyer, President, Aircraft Owners and Pilots Association (AOPA), 421 Aviation Way, Frederick, MD 21701, petitioned the FAA to revise 14 CFR § 61.3(a) and (l) to require a pilot to carry, and present for

appropriate inspection, a form of photo identification acceptable to the Administrator of the Federal Aviation Administration. Specifically, the AOPA requested that 14 CFR § 61.3(a) be amended to provide that a person may not act as a pilot of a civil aircraft of U.S. registry unless that person has a form of photo identification acceptable to the Administrator in that person's physical possession or readily accessible in the aircraft while exercising the privileges of a pilot certificate or special purpose pilot authorization. The AOPA also suggested 14 CFR § 61.3(l) be amended to provide that each person required to have a form of photo identification by 14 CFR § 61.3(a) be required to present it for inspection upon request from the Administrator or any Federal, State, or local law enforcement officer.

In its petition, the AOPA expressed the view that the intent of the DEA Act and ATSA provisions on pilot identification would be met by its recommended rule changes, and that its approach would be far less costly and quicker to implement than would any significant modification to the airman certification system. The AOPA notes that all fifty States and the District of Columbia issue a photo identification driver's license, and that currently candidates for a pilot certificate examination are required to present photo identification. Thus, the requirement to present a photo identification acceptable to the Administrator could be met with a driver's license, at no cost to pilots or the government. Precisely because of the very minimal burden of the recommended changes, the AOPA believes that its recommendation should be implemented through a direct final rule, and suggests that the FAA find notice and comment to be impractical, unnecessary, or contrary to the public interest.

The FAA's Acceptance of the Petition

By letter dated March 27, 2002, the FAA responded to the AOPA petition by stating that the proposal "provides a positive short-term measure to enhance security throughout the general aviation community." While the AOPA's recommendations are a good interim measure, neither the FAA nor the Transportation Security Administration has concluded that these measures address fully the concerns reflected in the DEA Act or ATSA. Although requiring a pilot to carry an acceptable photo identification will provide more security than not requiring an identification, the overlap of key information between the pilot certificate and the required photo identification will be limited and potentially inconsistent. For example, it is quite likely the addresses on the two documents will not match, because the address on a pilot certificate is not updated when a pilot moves. Moreover, an improved pilot certificate could include a variety of security enhancements in addition to simply having a photograph of the holder on the certificate.

This rule adopts the core of the AOPA's recommendations for pilot identification requirements. The FAA will continue to work in conjunction with the TSA to determine what further actions need to be taken to improve airman certification process. The FAA considers the AOPA's recommendations to be an expeditious and cost effective measure that will provide additional security through enhanced identification of pilots exercising the privileges of their certificate. Requiring pilots to carry photographic identification with a pilot certificate will be cost effective because most pilots already carry an identification acceptable to the Administrator, such as a driver's license, and the cost of obtaining a government issued photo identification is minimal. The TSA recognizes the ongoing security concerns regarding the use of an aircraft to conduct terrorist acts within

the United States. Therefore, TSA has requested that the FAA issue a final rule, without prior notice and public comment, effective upon publication, adopting the AOPA petition to require that pilots properly identify themselves. The TSA believes this action is necessary to prevent further terrorist acts which may result in grave hazards to aircraft, persons, and property within the United States.

The Rule Change

The chart below is a brief summary of the regulatory changes contained in this final rule. The list is followed by a more detailed discussion of the rule.

Final rule No.	Part 61 Sec. No./Para. No.	Summary of the Rule
1	§ 61.3(a)	Each person must carry a photo identification acceptable to the Administrator when exercising the privileges of a pilot certificate.
2	§ 61.3(l)	Each person must present such photo identification when requested to do so by the Administrator, an authorized representative of the NTSB or the TSA, or a law enforcement officer.

(1) 14 CFR § 61.3(a) is amended to require each person to carry a photo identification when exercising the privileges of a pilot certificate.

The FAA revises 14 CFR § 61.3(a) to require each person to carry a photo identification when exercising the privileges of a pilot certificate. The photo identification in most instances likely will be a driver's license issued by a State, the District of Columbia, or a territory or possession of the United States. It may also be a government identification card issued by the Federal government or a State, the District of Columbia, or a territory or possession of the United States, a military identification

card, or a passport. Under this rule, a credential with a photo issued by an air carrier or airport operator that provides unescorted access to a security identification display area at an airport regulated under 49 CFR part 1542 is acceptable. The rule also permits other forms of photo identification that the Administrator finds acceptable.

(2) 14 CFR § 61.3(l) is revised to require a person to present a photo identification when requested to do so by the Administrator, an authorized representative from the NTSB or the TSA, or a law enforcement officer.

The FAA revises 14 CFR § 61.3(l) so as to require a person to present a photo identification when requested to do so by the Administrator, an authorized representative of the NTSB or the TSA, or a law enforcement officer. A request from the Administrator for a person to present a photo identification includes a request from any FAA Aviation Safety Inspector or designated examiner. A request from an authorized representative of the NTSB for a person to present a photo identification includes a request from an Accident Investigator of the NTSB. A request from a law enforcement officer for a person to present a photo identification includes a request from any city, municipality, county, parish, borough, State, or Federal law enforcement officer.

Justification for Immediate Adoption

This action is being taken without providing the opportunity for prior notice and public comment. The TSA requests immediate adoption of this rule to require pilots to carry and present identification and the FAA finds this action is necessary to assist in preventing hazards to aircraft, persons, and property within the United States. The TSA, in consultation with the security agencies of the Executive Branch, monitors threats to

aviation security on a constant basis. The TSA has issued other regulatory documents that became effective immediately in order to minimize security threats and potential security vulnerabilities to the fullest extent possible, and the FAA issues this rule without prior notice and public comment for the same reason. The FAA, TSA, and other federal security agencies have been concerned about the potential misuse of an aircraft to carry out terrorist acts in the United States since September 11, and the TSA and FAA now believe it is necessary to require pilots to carry and present picture identification to help minimize the threat of such acts.

The FAA finds that prior notice and public comment are impracticable and contrary to the public interest, pursuant to section 553 of the Administrative Procedure Act (APA). Section 553(b)(B) of the APA permits an agency to forego notice and comment rulemaking when "the agency for good cause finds ... that notice and public procedures thereon are impracticable, unnecessary or contrary to the public interest." The use of notice and comment prior to issuance of this rule would delay the potential security benefit of this rulemaking and increase the public's exposure to the risk of another terrorist act unnecessarily. FAA asks for comment with publication of this rule, and will consider all comments received during the comment period. If changes to the rule are necessary to address aviation security more effectively, or in a less burdensome but equally effective manner, FAA will make such changes. The FAA finds that that the circumstances described herein warrant immediate action, and finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

Economic Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review, directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. §§ 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more, in any one year (adjusted for inflation).

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. This rule is considered significant under that Order. If we determine that the expected impact is so minimal that the regulation does not warrant a full evaluation, we include a statement to that effect and the basis for it in the preamble. The FAA has determined that the expected economic impact of this rule is so minimal that it does not warrant a full regulatory evaluation. This action imposes no costs on pilots subject to this rule because most persons already have some form of photo identification. It does, however, provide unquantifiable

security benefits by helping establish the identity of pilots. The FAA also has determined that this rule is consistent with the objectives of Executive Order 12866.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

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

This final action imposes no costs on any small entities subject to this rule. Consequently, the FAA certifies that this rule will not have a significant economic impact

on a substantial number of small entities. The FAA solicits comments on this certification.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, aren't considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA accordingly has assessed the potential effect of this rule to be minimal and therefore has determined that this rule will not result in an impact on international trade.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act) requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule 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 Act requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local and tribal governments on a proposed "significant intergovernmental mandate." Under the Act, a "significant intergovernmental mandate" is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of

$100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. § 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this rule would not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. We determined that this rule, therefore, would not have federalism implications.

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. We have determined that there are no requirements for information collection associated with this rule.

Environmental Analysis

FAA Order No. 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order No. 1050.1D, Appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those that may cause a significant impact on the human environment if implemented) qualify for a categorical exclusion. The FAA has determined that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its implementation.

Energy Impact

We assessed the energy impact of this rule in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94-163, as amended (42 U.S.C. § 6362). We have determined that this rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 61

Aircraft, Airmen, Aviation safety, and Reporting and recordkeeping requirements.

The Amendment

For the reasons stated in the preamble, the Federal Aviation Administration amends part 61 of Title 14 of the Code of Federal Regulations as follows:

PART 61-CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

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

Authority: 49 U.S.C. 106(g), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45302.

2. Amend § 61.3 by revising paragraphs (a) and ~~(l)~~ the introductory text of paragraph (l), and by adding paragraph (l)(4) to read as follows:

§ 61.3 Requirement for certificates, ratings, and authorizations.

(a) Pilot certificate. A person may not act as pilot in command or in any other capacity as a required pilot flight crewmember of a civil aircraft of U.S. registry, unless that person–

(1) Has a valid pilot certificate or special purpose pilot authorization issued under this part in that person's physical possession or readily accessible in the aircraft when exercising the privileges of that pilot certificate or authorization. However, when the aircraft is operated within a foreign country, a current pilot license issued by the country in which the aircraft is operated may be used; and

(2) Has a photo identification that is in that person's physical possession or readily accessible in the aircraft when exercising the privileges of that pilot certificate or authorization. The photo identification must be a:

(i) Valid driver's license issued by a State, the District of Columbia, or territory or possession of the United States;

(ii) Government identification card issued by the Federal government, a State, the District of Columbia, or a territory or possession of the United States;

(iii) U.S. Armed Forces' identification card;

(iv) Official passport;

(v) Credential that authorizes unescorted access to a security identification display area at an airport regulated under 49 CFR part 1542; or

(vi) Other form of identification that the Administrator finds acceptable.

* * *

(l) Inspection of certificate. Each person who holds an airman certificate, medical certificate, authorization, or license required by this part must present it and their photo identification as described in paragraph (a)(2) of this section for inspection upon a request from:

* * *

(4) An authorized representative of the Transportation Security Administration.

Issued in Washington, DC, on October 23, 2002

Marion C. Blakey

Marion C. Blakey
Administrator

Certified to be a True Copy

Bonnie Fritts

Bonnie Fritts