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COMMENTS REGARDING CHANGES TO 14 CFR PART 61 – PICTURE IDENTIFICATION REQUIREMENTS FOR AIRMEN

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Introduction

My name is Ken Lapides. I hold an **FAA** Airline Transport Pilot certificate, along with a Flight Instructor certificate that has airplane, instrument, and multi-engine ratings. Additionally, I am a card-carrying member of the Aircraft Owners and Pilots Association (AOPA). I am sending you these comments to indicate that I strongly disagree with the new changes to 14 CFR Part 61 regarding picture identification requirements for airmen. This change is unnecessary, it does not increase security in the slightest amount. However it definitely increases the invasion of privacy, by the government, into the lives of U.S. certificated airmen. In addition, this regulation change should have been subjected to the same notice and comment period to which other changes are subjected. The costs associated with this regulation change are not entirely minimal, as the rule-change notice would suggest. This amendment to 14 CFR Part 61 should be revoked or re-amended immediately to remove the requirement for United States certificated airmen to carry with them an approved form of photographic identification.

The new rule is unnecessary

The requirement for pilots to carry photographic identification is unnecessary. Each active pilot is already required to have “on their person” a pilot certificate and a current medical certificate while operating an aircraft. Each of these certificates has upon it a complete description of the pilot in question; including height, weight, sex, hair color, eye color, and date of birth. The medical certificate, if current, is guaranteed to be less than three years old. These two certificates already provide a very good description to anyone who inspects them. Many photo IDs have outdated photos which can be, in the case of a passport for instance, nearly 10 years old.

The same limitations which apply to the textual description of the airman on his certificates also apply to the photo identification. A person can change their facial hair, hair length (of the hair on their head), hair color, wear a wig, remove (shave) their hair, and change the color of their eyes using contact lenses. Having a photo identification would not cause the identification process to be any easier or more efficient than the textual method in any of these cases. This has the effect of rendering the photographic form of identification neither more nor less effective than the current system.

The new rule does not increase security

Having a photo identification in one's possession does not increase overall aviation security at all. Had this rule been firmly in place on September 10, 2001, it would not have prevented, nor would it have even deterred, the terrorist attacks of September 11, 2001. In fact, if the terrorists' bodies were pulled from the wreckage it is extremely likely that in the possession of each of them would be found a U.S. or State Government-issued photo identification card of some sort.

This new rule also does nothing to address the concerns of the Drug Enforcement Agency. Any person who is using an aircraft to smuggle illegal narcotics will not likely be carrying identifying information on them. If a criminal narcotics smuggler even took the time to obtain a proper FAA license, then they also already have a form of photo identification which is acceptable to the administrator. Forcing a criminal to produce this identification is a pointless exercise because it will already match the criminal's pilot certificate, if he bothered to obtain one.

In the FAA's own rule-change notice, they indicate that a photo identification requirement will likely not satisfy the concerns raised in the DEA act or the ATSA. The FAA states in the rule change notice that the overlap of information between the photo identification card and pilot certificate will potentially be very minimal due to address changes, name changes (in the case of marriage, for example), or moves out-of-state.

The new rule is an invasion of privacy

This new rule is targeted mainly at general aviation pilots. I say this because all air carrier pilots are already required to carry a company-issued air carrier identification card while performing their duties. Additionally, military pilots, over whom the FAA has little authority, have their own military identification requirements already in place. That leaves "private citizen" general aviation pilots.

As mentioned above, the photo ID requirement does little to improve overall security. Therefore, this new requirement is just a back-door attempt to take away the privacy of U.S. citizens. This rule makes private flying the ONLY activity that has a FEDERALLY mandated photo identification requirement. All driver's license formats are determined by the individual states themselves. Some states require photo driver licenses while others do not. Before this rule, the federal government has never required American citizens to carry "walking papers" for normal activities that do not leave the boundaries of the United States. Now, with this new requirement, any person who does not have a government issued identification card on them at all times while flying is subject to law enforcement or civil administrative action simply for not having the proper ID. This goes against a long-standing philosophy of the United States, that private citizens will not be forced by the U.S. government to carry proper papers or photographic identification.

Immediate adoption of the rule was not justified

The FAA states in its rule-change document that it, and the TSA, now believe that it is necessary for pilots to carry photo identification to minimize the threat of aircraft usage in the commission of a terrorist act. The FAA also states that the rule change is a direct result of a petition by Mr. Philip Boyer, president of the AOPA. So the photo ID rule was not considered important until it was suggested by the AOPA. It seems to me that if this rule were so extremely important, as indicated in the FAA's rule change document, that the FAA or TSA might have come up with the idea themselves, before being petitioned by an outside source. Perhaps, we should just name Phil Boyer to the position of FAA administrator and eliminate the middle man. The photo ID concept went from non-existent to imperative simply with the petition of one organization. Additionally, between the September 11th attacks and the implementation of this new rule, more than one full year has passed without the photo ID requirement in place. Yet, no general aviation aircraft were used in other terrorist actions, even without pilots being forced to carry photo identification cards. The Tampa incident was mainly a suicide attempt, which could have occurred with any type of vehicle such as a car or truck, and would have most likely had similar results. Additionally, the identity of the Tampa pilot was never in question. Had he been forced by this regulation to carry photographic identification, the incident would have happened in exactly the same manner.

The fact that the FAA used a petition from the AOPA to railroad through a change of regulation is ridiculous. 14 CFR 61.3 is one of the cornerstone FAA regulations, and should not be arbitrarily changed by circumventing the normal rulemaking process. The threat level to the U.S. has been lowered to step 3 of 5 by the Homeland Security Office. There have been no further terrorist attacks on the U.S., aviation related or otherwise, since September 11, 2001. This indicates that a NPRM and public comment period were NOT impracticable, nor were they contrary to the public interest. The FAA rulemaking document states that part of the reason for their direct rulemaking without comment period was not their own finding, but rather the request of the AOPA with which the FAA agreed. For this reason, the FAA should at least suspend implementation of its new rule until the "proper" rulemaking process is conducted. One of the major strengths of the FAA over the years has been their strong resistance to hasty rulemaking. The FAA always considers their new rules for a long time before rushing into anything rash. But in this case, contrary to precedent, the FAA took an outside petition from the AOPA, and a loophole in the Administrative Procedures Act to push through a new rule that has no positive effect, but places an additional burden on pilots. Again, perhaps we should defer all new rulemaking to the AOPA process, rather than the time-tested FAA way.

The cost of the new rule is not entirely minimal

Although the FAA document states that the cost is very minimal, this is not entirely true. Common knowledge states that there are approximately 600,000 active pilots in the United States. If each one is required to purchase a government issued identification card at an approximate cost of \$17 (unscientifically based on the price I paid for my driver's license, but likely indicative of the cost for most Americans), that works out to a recurring cost of \$10,200,000 spread out over the entire pilot group. This is not a one-time-deal like the pilot license, but rather something that each pilot will now be forced to renew on a continuing basis, regardless of whether they desire to renew their driver's licenses or not. While many pilots would probably renew their photo driver's licenses anyway, this recurring cost during each renewal cycle of these photo IDs will eventually add up to a very significant amount of money (financial burden) spread out over the pilot group. This is in contravention to the FAA's charter policy of promoting aviation by keeping costs low for the user.

Conclusion

In conclusion, the FAA should revoke or re-amend the rule change to eliminate the need to carry photo identification in addition to a pilot certificate while operating aircraft. As I have stated, this change is unnecessary and potentially costly. Additionally, despite the innocuousness of this rule, it is an unprecedented invasion of privacy, the likes of which have not before been seen on a federal level. And most importantly, this rule does nothing to actually improve security. Even the FAA and TSA admit, in their rulemaking document, that the security benefits of this new rule are "unquantifiable."

As I have said before, the notice and comment period which should have accompanied the creation of this rule would not have been impracticable, nor would it have been unnecessary or contrary to the public interest. Instead of railroading this regulation into effect without using the proper process, the FAA should open this up to the full NPRM and comment process. Then, all users will have a chance to have a voice in the creation of this important rule. Finally, I think the FAA should reconsider before succumbing to the "false deity" of photo identification as the solution to any or all security problems.