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FAA-00-7497-5

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration.

14 CFR Parts 61, 63, 65, 108, 121, and 135

[Docket No.: FAA-2000-7497; Amendment No. 61-107, 63-30, 65-41, 108-18, 121-280 and 135-78]

RIN 2120-AH01

Advanced Qualification Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is establishing a new termination date for Special Federal Aviation Regulation (SFAR) No. 58 (55 FR 40275; October 2, 1990), which provides for the approval of an alternate method (known as "Advanced Qualification Program" or "AQP") for qualifying, training and certifying, and otherwise ensuring the competency of crewmembers, aircraft dispatchers, other operations personnel, instructors, and evaluators who are required to be trained or qualified under 14 CFR parts 121 or 135. This action will establish a new termination date, October 2, 2005, for SFAR 58 to allow time for the FAA to complete the rulemaking process that will incorporate SFAR 58 into the Federal Aviation Regulations.

DATE(S): Effective October 2, 2000

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*Part 10/10/00
Part VII*

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SUPPLEMENTARY INFORMATION:

Availability of Final Rules

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321-3339) or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512-1661).

Internet users may reach the FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm> or the GPO's web page at <http://www.access.gpo.gov/nara> for access to recently published rulemaking documents.

Any person may obtain a copy of this document 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. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future rulemaking documents 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.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at <http://www.faa.gov/avr/arm/sbrefa.htm> and may send electronic inquiries to the following Internet address: 9-AWA-SBREFA@faa.gov.

Background

On June 8, 2000, the FAA issued a notice of proposed rulemaking (NPRM) proposing to extend the expiration date of SFAR 58 (65 FR ³¹⁸⁵⁶ 3836; June 16, 2000). The comment period ^{Y.M.} closed on July 17, 2000, and no comments were received. The ₁₀₋₄₋₀₀ amendment is adopted as proposed.

Good Cause Justification for Immediate Adoption

The reasons that justified the original issuance of SFAR 58 still exist. Therefore, it is in the public interest to establish a new expiration date for SFAR 58 of October 2, 2005. If the FAA publishes a final rule incorporating SFAR 58 into the regulations before this expiration date, SFAR 58 will be rescinded concurrently. Ordinarily under the Administrative Procedure Act, a substantive rule must be served or published not less than

30 days before its effective date except, among other things, if the agency finds "good cause" for making it effective sooner. See 5 U.S.C. Section 553(d)(3). The FAA finds that the continuation of SFAR 58 is necessary to permit continued training under this program and to avoid the confusion that would result if the program were discontinued or temporarily suspended because of the general legal requirement to publish a rule at least 30 days before it becomes effective.

For these reasons, and because as a voluntary program AQP imposes no additional burden on any person, the FAA finds "good cause" for making this amendment, which extends the termination date for the SFAR by 5 years, effective immediately upon issuance.

Economic Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 required agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 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. The

Trade Act directs agencies, where appropriate, to use those international standards as the basis of U.S. standards. And 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. This requirement applies only to rules that include a Federal mandate on State, local, or tribal governments or the private sector, likely to result in a total expenditure of \$100 million or more in any one year (adjusted for inflation). In conducting these analyses, FAA has determined this rule: 1) has benefits that justify its costs, is not a "significant regulatory action" as defined in the Executive Order, and is not "significant" as defined in DOT's Regulatory Policies and Procedures; 2) will not have a significant impact on a substantial number of small entities; 3) has no impact on international trade; and 4) does not impose an unfunded mandate on state, local, or tribal governments or on the private sector.

AQP is not mandatory; consequently, those operators who choose to participate in the program would do so only if it was in their best interest. Enough operators have found it in their best interest that AQP has become an important means for meeting the requirements for air carrier training programs. AQP gives air carriers flexibility in meeting the safety goals of the training programs in 14 CFR parts 121 and 135 without sacrificing any of the safety benefits derived from those programs. Thus, extending AQP for

another 5 years will not impose any additional costs nor decrease the present level of safety. Because this final rule extends an existing, voluntary program that has become an important means for some operators to comply with training requirements, the FAA finds that a detailed regulatory evaluation is not necessary

Initial 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 businesses, 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 1980 act 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 rulemaking allows certain air carriers to continue participating in a voluntary, alternative method for qualifying, training and certifying, and otherwise ensuring competency of crewmembers, aircraft dispatchers, and other operational personnel, instructors, and evaluators who are required to be trained or qualified under 14 CFR parts 121 and 135. As such, this rulemaking will not impose any additional cost on those air carriers. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small air carriers.

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, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the

Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and therefore no affect on any trade-sensitive activity.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action 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, the FAA has determined that this final rule will not have federalism implications.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995, 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. Section 204(a) of the Act, 2 U.S.C. 1534(a), 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 "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will 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. 1553, 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.

The FAA determines that this final rule does not contain a significant intergovernmental or private sector mandate as defined by the Act.

International Trade

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activity that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as

safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services to into the U.S.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and therefore no affect on any trade-sensitive activity.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94-163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is

not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 61

Air safety, Air transportation, Aviation safety, Safety.

14 CFR Part 63

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

14 CFR Part 65

Airman, Aviation safety, Air transportation, Aircraft.

14 CFR Part 108

Airplane operation security, Aviation security, aviation safety, Air transportation, Air carriers, Airlines, Security measures, Transportation, Weapons.

14 CFR Part 121

Aircraft pilots, Airmen, Aviation safety, Pilots, Safety.

14 CFR Part 135

Air carriers, Air transportation, Airmen, Aviation safety, Safety, Pilots.

The Amendment

In consideration of the foregoing, the federal Aviation Administration ~~proposes to amend~~ SFAR 58 (14 CFR parts 61,

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63, 65, 108, 121, and 135) of Title 14, Code of Federal Regulations, as follows:

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, 45301-45303.

2. The authority citation for part 63 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40108, 40113, 44701-44703, 44710, 44712, 44714, 44716, 44717, 44722, 45303.

3. The authority citation for part 65 continues to read as follows:

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

4. The authority citation for part 108 continues to read as follows:

Authority: 49 U.S.C. 106(g); 5103, 40113, 40119, 44701-44702, 44705, 44901-44905, 44907, 44913-44914, 44932, 44935-44936, 46105.

5. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 449112, 46105.

6. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44702, 44705,
44709, 44711-44713, 44715-44717, 44722.

7. In part 121, SFAR 58 is amended by revising
paragraph 13 to read as follows:

SPECIAL FEDERAL AVIATION REGULATION NO. 58--ADVANCED
QUALIFICATION PROGRAM

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13. Expiration. This Special Federal Aviation
Regulation terminates on October 2, 2005, unless sooner
terminated.

Issued in Washington, DC on **SFP 29 2000**


Jane F. Garvey

Administrator