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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 (FAA), DOT

ACTION: Disposition of comments on final rule.

SUMMARY: On October 28, 2002, the FAA revised the authority to exercise the privileges of a pilot certificate to require a pilot to carry photo identification acceptable to the Administrator. Additionally, the final rule required a pilot certificate holder to present that photo identification when exercising the privileges of the certificate. The rule permits the Administrator, an authorized representative of the National Transportation Safety Board or Transportation Security Administration, or a law enforcement officer to inspect the photo identification. These requirements addressed pilot identification and pilot certificate security concerns.

DATES: The final rule was effective on October 28, 2002. The closing date for comments on the final rule was November 27, 2002.

ADDRESSES: You may examine the complete docket for the final rule on pilot picture identification at the Docket Management System (DMS). DMS is located at the U.S. Department of Transportation, 400 Seventh Street, SE, Room 401, Plaza Level, Washington DC 20590-0001. Hours are 9:00 a.m. to 5:00 p.m, Monday-Friday, except Federal holidays. You may also access the docket electronically at http://dms.dot.gov. A "Simple Search" on docket number 11666

will provide a list of all comments as well as a copy of the final rule and this disposition document.

FOR FURTHER INFORMATION CONTACT: John Lynch, Certification Branch, AFS-840, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-3844.

SUPPLEMENTARY INFORMATION

Background

The Aviation and Transportation Security Act (ATSA), Public Law 107-71, enacted on November 19, 2001, required the Under Secretary of Transportation for Security to consider upgrading U.S. pilot certificates. Section 109 (a)(6) of ATSA provided 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."

In addition, the FAA received a petition from the Aircraft Owners and Pilots Association (AOPA), dated February 21, 2002. AOPA asked the FAA to revise 14 CFR 61.3(a) and (l) to require a pilot to carry photo identification while exercising the privileges of the pilot certificate. The petition also requested that the FAA require a pilot to present that photo identification when requested for inspection by an appropriate official. The AOPA pointed out in its petition that this solution would be far less costly and quicker to implement than would any significant modification to the pilot certification system. The AOPA suggested the most commonly held form of photo identification is a State driver's license, which would impose no additional cost to the pilot or to the Federal government.

The FAA responded to the AOPA on March 27, 2002, stating the proposal "provides a positive short-term measure to enhance security throughout the general aviation community." The FAA also acknowledged that, while the proposal was a good interim measure, it did not fully address the concerns of ATSA or requirements of the Federal Aviation Administration Drug Enforcement Assistance Act of 1988 (DEA Act). The FAA also stated that it would continue to work with the Transportation Security Administration (TSA) to determine what further actions need to be taken to improve the pilot certification process. The TSA, recognizing ongoing security concerns regarding the use of an aircraft to conduct terrorist acts within the United States, requested the FAA to issue a final rule, immediately effective, adopting the AOPA proposal as an interim measure. Thus, on October 28, 2002, the final rule for pilot picture identification was published and effective on that date.

Discussion of Comments Received on the Final Rule

Comment: Many commenters expressed overall support for the rule as a necessary, low-cost first step in increasing security by identifying pilots. Individuals applauded the FAA for a quick solution that is easily available and does not incur additional expense. The Aircraft Owners and Pilots Association noted that publishing this requirement as a direct final rule was the right action to address this security issue.

FAA's response: As noted in the final rule, the FAA found that this requirement was an "expeditious and cost effective measure that will provide additional security through enhanced identification of pilots exercising the privileges of their certificate." In addition, TSA determined that the security benefits of this rule must not be delayed and requested the FAA to adopt a final rule.

Comment: Some commenters, however, were highly critical of the rule, stating the rule provides no security benefits, but rather represents an attempt by the FAA to look like we are addressing security concerns.

FAA response: The FAA disagrees with this comment. This pilot identification rule adds another layer of security to the aviation system. This rule provides added protection against potential acts of terrorism in the aviation system by requiring pilots to produce a form of identification other than the pilot certificate, when asked by an appropriate official. This rule requires a form of pilot identity confirmation through a photo identification.

Comment: Other commenters said the rule would be ineffective because anyone can obtain a falsified driver's license.

FAA response: Although this rule does not address security concerns with the various types of identification that may be used to comply with this rule, the FAA recognizes that each identification has an authority working to maintain a secure identification.

Comment: One commenter noted that profiling would provide more security benefits than this rule. Another commenter suggested fingerprinting or laser-scanned identification instead of this rule.

FAA response: As stated in the NPRM, the FAA adopted this rule as an interim measure to implement security measures concerning the pilot certificate. Measures such as profiling of pilots or more sophisticated methods of identification, like fingerprinting, are long term broad security measures that are beyond the scope of this rule. However, the FAA continues to consider various types of long term security measures.

Comment: Several commenters suggested that the current rule provides little or no security benefit and urged the FAA to require a photograph on the pilot certificate. These commenters

noted that states require photo identification for driver's licenses and there is very little cost to the public for these identifications.

FAA Response: The FAA recognizes the need for additional security measures associated with the pilot certificate, thus, this rule was adopted as an interim measure. The FAA took a permanent step in adding security features to the pilot certificate, by replacing paper certificates with a new plastic identification card that contains additional security features.

Comment: One commenter asked whether a security guard at an airport is authorized under 61.3(a)(2) to ask for pilot identification.

FAA Response: A security guard could be authorized to ask for pilot identification under 61.3(a)(2), if state or local law enforcement authorities have delegated duties to that security guard and the pilot is executing the privileges of the airman certificate.

Comment: Several commenters, including the Air Line Pilots Association, International (ALPA), International Brotherhood of Teamsters (IBT), and the New York State Office of Public Security, commented that this rule may serve as an interim measure, but the rule does not meet the intent of either the DEA Act or ATSA. These commenters urged the FAA to develop and require an up-to-date, fraud-resistant, means of pilot identification, similar to the identification card proposed in response to the DEA Act, March 12, 1990 (55 FR 9270). ALPA supported the Department of Transportation's Transportation Worker Identification Card (TWIC).

FAA response: Since the issuance of the final rule on pilot picture identification, the FAA has responded to many of these suggestions by replacing the current paper pilot certificate with a plastic credit-card sized certificate that incorporate security features. The FAA issues new certificates as pilots earn additional ratings, replace a certificate, or request a new certificate. Pilots who seek a replacement certificate, may obtain one by submitting an application with a $2

fee to Flight Standards Service, Airmen Certification Branch, AFS-760, FAA, P.O. Box 25082, Oklahoma City, Oklahoma, 73125 (telephone: (405) 954-3205). The FAA recognizes that its new plastic pilot certificate does not establish a combined photo identification and pilot certificate at this point. However, as previously stated, the "Picture Identification Requirements" final rule is an interim measure, and the FAA is considering various security options associated with the new plastic identification certificate. In addition, the new airman certificate, partially addresses some of the concerns in the DEA Act and ATSA.

Comment: One commenter suggested the FAA extend this rule to other crew members such as flight engineers or navigators.

FAA response: The FAA does not plan to extend this rule to other crewmembers at this time.

Comment: One commenter suggested including the immigration status of a pilot/flight instructor along with the pilot's authority to work in the U.S.

FAA Response: Although the new pilot certificate may be capable of containing many different security features, the FAA does not plan at this time to include a pilot's immigration or authority to work status in the certificate.

Comment: Several commenters were concerned that it may be difficult for student pilots under the age of 16 to comply with this rule because such students may not possess a driver's license. Commenters also suggested these individuals are unlikely to have a passport or other Government identification that would comply with this rule.

FAA response: Section 61.3(a)(2) has several options for meeting the requirements of carrying a photo identification that matches the pilot certificate and showing the identification to the proper authorities. The FAA believes it is not difficult for students, even those under the age of 16, to obtain an identification card that will meet the requirements of this rule. For example, the

Department of Motor vehicles for many states issue photo identification cards to individuals under the age of 16 or otherwise not eligible for a driver's license. For further information contact your local Department of Motor Vehicles or visit http://www.dmv.org and click on identification cards.

Comment: One commenter stated that the rule is unnecessary because each pilot is already required to carry with his/her pilot certificate a current medical certificate which has that pilot's height, weight, hair color, eye color, etc.

FAA response: While a medical certificate does include the listed physical descriptions, one description could fit many people. The photo makes it readily apparent whether or not the medical certificate actually matches the photo and thus identifies the person.

Comment: Several individuals commented that this rule would not have prevented the September 11 terrorist attacks because terrorists would have some form of photo identification with them. They stated that more than a year has passed since the terrorist attacks, and there has been no terrorist attacks in general aviation. Yet another commentator stated that it is virtually impossible to prevent acts of terrorism; it is up to the citizenry to be more vigilant.

FAA response: The fact that time has passed since the terrorist attacks of September 11, does not mean the FAA can afford to relax its security measures. The FAA agrees with the commenter that a vigilant citizenry is important to prevent acts of terrorism. However, the FAA will continue to examine and implement security measures, with the advice of the TSA, to carry out all reasonable measures to ensure the security of the aviation system in the United States.

Comment: One commenter calls the final rule an invasion of privacy because it contradicts a long-standing policy that the U.S. government will not require private citizens to carry identification.

FAA response: This rule does not constitute an invasion of privacy. This rule only applies to those individuals who seek to exercise the privileges of a pilot certificate, that privilege now includes the obligation to identify oneself for security purposes.

Comment: A pilot commented that immediate adoption of the rule was not justified. This individual believes that because the threat level designated by the Department of Homeland Security was lowered to "Elevated" and there have been no further terrorist attacks on the U.S., aviation related or otherwise, since September 11, 2001, the public should have been given notice and the opportunity to comment before final action was taken. This commenter believes that for purposes of the notice and comment requirements of the Administrative Procedures Act (APA) the FAA's partial adoption of the AOPA petition circumvented the rulemaking process.

FAA response: Federal agencies are allowed to issue final rules without comment under section 553 of the APA when a comment period is "impractical or contrary to public interest." In this case, the FAA was responding to TSA's request to issue a regulation to help prevent the use of aircraft in terrorist acts. As noted in both the NPRM and final rule, the FAA did not adopt the AOPA petition in its entirety. The TSA determined immediate adoption without notice and comment was in the public interest, and the FAA followed that determination.

Comment: Several individuals commented that their state does not include a photo as part of the driver's license. One individual commented that he has no identification that includes a photo.

FAA response: The FAA believes it is not difficult for pilots to obtain an identification card that will meet the requirements of this rule. If a pilot is not eligible for a one of the acceptable methods of identification permitted by the rule, the pilot may submit a request for an exemption pursuant to 14 CFR 11.63.

Comment: Another individual commented that the cost of the new rule is not necessarily minimal. The commenter stated that if each of the existing 600,000 pilots in the United States had to purchase some form of government identification, estimated at $17.00 per pilot, the cost of the rule would be $10,200,000.

FAA response: The FAA believes that the vast majority of pilots will have government identification cards that meet the requirements of this rule. The FAA anticipates most pilots will have either a driver's license with a picture or a passport. Therefore, the cost to pilots is anticipated to be minimal.

Comment: One commenter asked whether "official passport" in 61.1(a)(2)(iv) means a U.S. official passport or does it include official passports issued by foreign governments.

FAA Response: The intent of "official passport" in 61.1(a)(2)(iv) was to include passports issued by the U.S. government or any travel document issued by a competent authority showing the bearer's origin, identity and nationality, if any, which is valid for the admission of the bearer into a foreign country.

Comment: Several individuals commented on the effect of this rule on foreign persons holding a U.S. pilot certificate. One commenter asked whether this rule is intended to apply outside the U.S. because this rule applies to "U.S. registered aircraft," including aircraft operated outside of the U.S. The commenter is concerned that pilots operating U.S. registered aircraft outside the U.S. will only be able to comply with this rule if they have an official passport or another form of identification the Administrator found acceptable.

FAA Response: Foreign pilots operating U.S. registered aircraft outside the U.S. will only have to comply with 61.3(a)(2) when such pilots are executing the privileges of a U.S. airman certificate. If the foreign pilot is operating the U.S. registered aircraft under the authority of a

certificate issued by a foreign country, the pilot does not have to comply with this rule. Such operations are permitted under 61.1(a)(1), where the pilot is operating the aircraft under the authority of a pilot certificate issued by the country in which the aircraft is being operated. If the foreign pilot is relying on a U.S. pilot certificate, the pilot must comply with 61.1(a)(2).

Comment: One commenter asked whether a foreign pilot is subject to this rule when operating any aircraft in the U.S.

FAA Response: This rule applies to pilots exercising the privileges of a U.S. pilot certificate. The registration or location of the aircraft the pilot is operating does not determine whether a pilot must comply with this rule.

Conclusion

After consideration of the comments submitted in response to the final rule, the FAA has determined that no further rulemaking action is necessary. Amendment 61-107 remains in effect as adopted.

Issued in Washington, DC on

Marion C. Blakey

Administrator