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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 11, 61, and 91

[Docket No. FAA-2023-1351; Amdt. Nos. 1-77, 11-68, 61-156, 91-378]

RIN 2120-AL61

Public Aircraft Logging of Flight Time, Training in Certain Aircraft Holding Special Airworthiness Certificates, and Flight Instructor Privileges

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: As directed by the FAA Reauthorization Act of 2018, the FAA will allow pilots conducting public aircraft operations to credit their flight time towards FAA civil regulatory requirements. Additionally, consistent with the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, this final rule will amend the operating rules for experimental aircraft to permit certain flight training, testing, and checking in these aircraft without a letter of deviation authority. As directed in the FAA Reauthorization Act of 2024, the same relief will be extended to certain flight training, testing, and checking in limited category, primary category, and experimental light sport aircraft. This final rule also revises miscellaneous amendments related to recent flight experience, flight instructor privileges, flight training in certain aircraft holding special airworthiness certificates, and the related prohibitions on conducting these activities for compensation or hire. These changes will clarify existing regulatory requirements, align the regulations with current industry practice, and ensure compliance with the FAA Reauthorization Acts of 2018 and 2024 and the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023.

DATES: Effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see "How to Obtain Additional Information" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Erin Cappel, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267-1100; email erin.cappel@faa.gov.

SUPPLEMENTARY INFORMATION:

List of Abbreviations and Acronyms Frequently Used In This Document

ATC: Air Traffic Control

ELSA: Experimental Light-Sport Aircraft

ICAO: International Civil Aviation Organization

IFR: Instrument Flight Rules

LODA: Letter of Deviation Authority

NAS: National Airspace System

NPRM: Notice of Proposed Rulemaking

NTSB: National Transportation Safety Board

PAO: public aircraft operation(s)

PIC: Pilot-in-command

SIC: Second-in-command

SLSA: Special Light-Sport Aircraft

VFR: Visual Flight Rules

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I. Executive Summary

A. Purpose of the Regulatory Action

As directed by section 517 of the FAA Reauthorization Act of 2018 (Pub. L. 115-254), this final rule allows pilots conducting public aircraft operations (PAO) under Title 49 of the United States Code (49 U.S.C.) 40102(a)(41) and 40125 to credit their flight time towards FAA civil regulatory requirements. While section 517 requires the FAA to

issue regulations to allow the logging of flight time in aircraft used in PAO[1] under direct operational control of forestry and fire protection agencies,[2] this final rule will permit all PAO to be eligible for logging of flight time. Moreover, this final rule expands the regulatory framework to allow pilots serving in PAO as second-in-command (SIC) to log flight time under certain circumstances.

This final rule clarifies recent flight experience requirements and authorized flight training activities under part 61. This final rule adds § 61.57(e)(5) to codify an exception that would enable a person receiving flight training to act as pilot-in-command (PIC) in certain circumstances, even if that person does not meet the recent flight experience requirements for carrying passengers under § 61.57(a) or (b). Additionally, the FAA adds "maintaining or improving skills for certificated pilots" to the list of flight instructor privileges in §§ 61.193(a)(7) and 61.413(a)(6) to clarify that flight instructors are authorized to conduct certain specialized and elective training. Finally, this final rule revises the definition of "public aircraft" to align with the revised definition of 49 U.S.C. 40125(a)(2), which was amended by section 923 of the FAA Reauthorization Act of 2024.

Furthermore, this final rule amends part 91 operating rules to explicitly set forth prohibited operations and create limited exceptions to the general prohibition on carriage of persons for compensation or hire for flight training, testing, and checking in aircraft holding certain special airworthiness certificates consistent with section 5604 of the National Defense Authorization Act (NDAA). This final rule also removes the

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[1] The FAA uses the term "public aircraft operation" (PAO) to refer to public aircraft operations in general. For purposes of this rulemaking document, uses the abbreviation "PAO" to refer to both the singular and plural of those operations. The FAA considers the two terms to be synonymous.

[2] As discussed elsewhere in this document, the FAA notes that section 826 of the FAA Reauthorization Act of 2024 (Pub. L. 118-63) requires that, notwithstanding any other provision of law, aircraft under the direct operational control of forestry and fire protection agencies are eligible to log pilot flight times, if the flight time was acquired by the pilot while engaged on an official forestry or fire protection flight, in the same manner as aircraft under the direct operational control of a Federal, State, county, or municipal law enforcement agency. Section 826 further stated that this provision shall be applied as if enacted on October 5, 2018. As noted, this final rule meets, and expands upon, the requirements of section 826.

requirement for owners (and certain persons affiliated with owners) to obtain a letter of deviation authority (LODA) to accomplish flight training in their aircraft, as directed by section 814 of the FAA Reauthorization Act of 2024, and to clarify the general prohibition on operating aircraft with certain special airworthiness certificates while carrying persons or property for compensation or hire. Additionally, this final rule expands certain flight training, testing, and checking abilities in limited category, primary category, and experimental light sport aircraft. The FAA anticipates that the changes will provide greater access to specialized training in aircraft with special airworthiness certificates.

B. Changes Made in this Final Rule

After considering comments on the notice of proposed rulemaking (NPRM)[3] provided by the public, this final rule implements several changes from what was proposed in the NPRM. Table 1 provides a brief summary of all regulatory changes associated with this rulemaking, including those changes from the NPRM to final rule. The changes are discussed in more detail in Section IV of this preamble.

Table 1. Summary of Regulatory Text Changes

Provision	Regulatory Citation (14 CFR)	Proposed Action	Final Rule Action
Definitions	§ 1.1	No proposed changes.	Revises the definition of "public aircraft".
Applicability and definitions.	§ 61.1(b)	No proposed changes.	Amends § 61.1(b) to define "passenger" as any person on board an aircraft other than a crewmember, FAA personnel, manufacturer personnel required for type certification, or a person receiving or providing flight training,

[3] See Public Aircraft Logging of Flight Time, Training in Certain Aircraft Holding Special Airworthiness Certificates, and Flight Instructor Privileges, 88 FR 41194 (June 23, 2023).

			checking, or testing as authorized by part 61.
Pilot logbooks	§ 61.51(f)(4)	Clarifies that a person designated as second-in-command (SIC) by a government entity may log SIC time if the aircraft used was a large aircraft as defined in § 1.1, a turbo-jet powered airplane, or if the aircraft holds or originally held a type certificate that requires a second pilot.	Adopted as proposed.
	§ 61.51(f)(4)(i)	Specifies that SIC time logged under paragraph (f)(4) may not be used to meet the aeronautical experience requirements for the private or commercial pilot certificates or an instrument rating.	Adopted as proposed.
	§ 61.51(f)(4)(ii)	Delineates that an applicant for an air transportation pilot (ATP) certificate who logs SIC time under § 61.51(f)(4) is issued an ATP certificate with a limitation.	Modifies the text to specify that an ATP applicant only needs a limitation added to their ATP certificate in accordance with ICAO requirements if that applicant logs second in command time in an aircraft that is not type certificated for two pilots; adds reference to § 61.161.
	§ 61.51(j)(4)	Allows logging of flight time for pilots engaged in any PAO in	Adopted as proposed.

		accordance with 49 U.S.C. 40102(a)(41) and 40125.	
Recent flight experience: Pilot in command.	§ 61.57(a)(1) and (b)(1)	No proposed changes.	Revises "passengers" to "persons" due to new § 61.1 definition of "passenger."
	§ 61.57(e)(5)	Provides an exception to § 61.57(a) and (b) enabling a pilot to regain recent flight experience with a flight instructor on board.	Adopted as proposed.
	§ 61.57(e)(6)	No proposed change.	Adds an exception to § 61.57(a) and (b) to harmonize with § 61.47(c).
Aeronautical experience: Airplane category rating.	§ 61.159(e)	Allows a pilot to credit SIC time logged under PAO toward the total time for an ATP certificate.	Adopted as proposed.
Aeronautical experience: Rotorcraft category and helicopter class rating.	§ 61.161(d)	Allows a pilot to credit SIC time logged under PAO toward the total time for an ATP certificate.	Adopted as proposed.
Flight Instructor Privileges.	§§ 61.193(a) and 61.413(a)	Clarifies that, within the limits of their certificates, authorized flight instructors may conduct ground and flight training, and certain checking events, in addition to issuing endorsements.	Revises the introductory paragraph of § 61.413(a) to mirror the language provided in § 61.193(a) to ensure consistency. Otherwise adopted as proposed.

	§§ 61.193(a)(7) and 61.413(a)(6)	Clarifies that flight instructors are authorized to conduct certain specialized and elective training.	Adopted as proposed.
	§§ 61.193(c) and 61.413(c)	Clarifies that the privileges afforded to authorized flight instructors under these provisions do not permit operations that would require an air carrier or operating certificate or specific authorization from the Administrator.	Adopted as proposed.
Limited category civil aircraft: Operating limitations.	§ 91.315	Adds new § 91.315(a) through (d) to clarify operations that may not be conducted while carrying persons or property for hire and directs stakeholders to new § 91.326.	Adopted as proposed.
Aircraft having experimental certificates: Operating limitations.	§ 91.319(a)	Revises the introductory text to include a reference to § 91.326.	Adopted as proposed.
	§ 91.319(a)(2)	Revises the broad language in § 91.319(a)(2) regarding the operation of experimental aircraft carrying persons or property for compensation or	Adopted as proposed.

		hire to further clarify its intent.	
	§ 91.319(d)(3)	Replaces "air traffic control (ATC)" with "control tower."	Adopted as proposed.
	§ 91.319(e), (e)(1), and (e)(2)	Removes the date restriction on flight training in these aircraft and cross-references proposed § 91.326.	• Amends the introductory text by directly referencing light-sport aircraft and moves the exception language into paragraph (e)(1). • Modifies § 91.319(e)(2) by directly referencing light-sport aircraft. • Adds language to be inclusive of aircraft certificated under § 21.191(i) for use in flight training.
	§ 91.319(f)	Moves the exception language into new paragraph (f)(1). Adds new paragraph (f)(2) to allow solo flights in accordance with a training program included as part of the deviation authority specified under § 91.326(b).	Adopted as proposed.
	§ 91.319(f)(2)	Adds language to permit training in certain experimental light-sport aircraft for compensation or hire through existing deviation	Adopted as proposed.

		authority in accordance with proposed § 91.326(b).	
	§ 91.319(h)	Removes the current deviation authority and reserves the paragraph.	Adopted as proposed.
Primary Category Airworthiness Certificates	§ 91.325(a)	Adds new paragraphs (a)(1) through (4) to clarify operations that may not be conducted while carrying persons or property for hire.	Adopted as proposed.
	§ 91.325(b)	Adds a reference to § 91.326(a) to the introductory language. Enables primary category aircraft to be used for flight training, checking, and testing without the need to obtain deviation authority.	Corrects reference to § 91.326(c) instead of § 91.326(a) and otherwise adopted as proposed.
	§ 91.325(c)	Adds new § 91.326(c) to permit primary category aircraft maintained by FAA certificated mechanics or authorized repair stations to be operated for compensation or hire for the purposes of conducting flight training, checking, and testing without deviation	Adopted as proposed.

		authority or an exemption.	
Exception to operating certain aircraft for the purposes of flight training, flightcrew member checking, or flightcrew member testing	§ 91.326(a)	Adds new § 91.326 to provide who may receive and provide flight training, checking, and testing without deviation authority and to specify when deviation authority is required for these operations.	• Adds the title "General." • Modifies the language to specify that, notwithstanding the prohibitions in §§ 91.315, 91.319(a), and 91.325, a person may conduct flight training, checking, or testing in a limited category aircraft, experimental aircraft, or primary category aircraft under the provisions of this section. • Moves the § 91.326(a) operations not requiring a LODA to § 91.326(c)(1).
Exception to Operating Certain Aircraft for Compensation or Hire.	§ 91.326(a)(1)	Prohibits the authorized instructor from providing both the training and the aircraft.	Redesignates the proposed language as § 91.326(c)(1)(i).
	§ 91.326(a)(2)	Prohibits any person from broadly offering the aircraft as available for the activity.	Redesignates the proposed language as § 91.326(c)(1)(ii).
	§ 91.326(a)(3)	Specifies that no person would be permitted to receive compensation for use of the aircraft for a specific	Redesignates the proposed language as § 91.326(c)(1)(iii).

		flight during which flight training, checking, or testing was accomplished, other than expenses for owning, operating, and maintaining the aircraft.	
	§ 91.326(b)	Provides that any person who wants to conduct flight training, checking, or testing in limited category and experimental aircraft outside the restrictions and limitations of proposed § 91.326(a) and (c) may apply for deviation authority.	Changes proposed title to "Operations requiring a letter of deviation authority." Removes the reference to § 91.326(a).
	§ 91.326(b)(1)	Clarifies that no person may operate under this section without a LODA.	Adopted as proposed.
	§ 91.326(b)(2)	Enables the FAA to cancel or amend a LODA if it determines that the deviation holder has failed to comply with the conditions and limitations or at any time if the Administrator determines that the deviation is no longer necessary or in the interest of safety.	Adds language to § 91.326(b)(2) to memorialize the Administrator's authority to deny an application for a LODA if it would not be in the interest of safety or is unnecessary.

	§ 91.326(b)(3)(i) through (ix)	Enumerates the items an applicant would be required to include in their request for deviation authority.	Removes § 91.326(b)(3)(vi) and otherwise adopted as proposed.
	§ 91.326(b)(4)	Allows the Administrator to continue to prescribe additional conditions and limitations in LODAs for experimental aircraft and extend that allowance to LODAs issued for training, testing, and checking in limited category aircraft when necessary for safety.	Adds certain conditions and limitations in new § 91.326(b)(4)(i) through (viii).
	§ 91.326(b)(5)	Limits the persons permitted to be on board an aircraft during operations under a LODA to authorized flight instructor, designated examiner, person receiving flight training or being checked or tested, or persons essential for the safe operation.	Allows up to two trainee observers to be carried in operations conducted under a LODA, provided the carriage is not prohibited by any other regulation, the observer is enrolled in in a LODA training course for the same aircraft, and the observation takes place from a forwardmost observer seat with an unobstructed view of the flightdeck.
	§ 91.326(b)(6)	Specifies that the Administrator may limit the types of training, testing, and checking authorized under	Adopted as proposed.

		this deviation authority.	
	§ 91.326(c)	Instructs holders of LODAs issued under § 91.319(h) on LODA validity and expiration at the time of publication of the final rule.	• Redesignates proposed § 91.326(c) as § 91.326(d), with no substantive revisions. • Adds § 91.326(d), titled "Previously issued letters of deviation authority." • New § 91.326(c), titled "Operations not requiring a letter of deviation authority," provides introductory language on operations that may be conducted without a LODA (see previously denoted revisions to § 91.326(a)).
	§ 91.326(c)(2)	No proposed change.	Adds new § 91.326(c)(2) to specify that a person may operate a limited category aircraft, experimental aircraft, or primary category aircraft to conduct flight training, checking, or testing without a LODA if no person provides and no person receives compensation for the flight training, checking, or testing, or for the use of the aircraft.
Aircraft having a special airworthiness certificate in the light-sport category:	§ 91.327(a)(2)	Adds to the existing explicit permission for flight training that a person may	Adopted as proposed.

Operating limitations		conduct checking and testing.	

C. Summary of the Costs and Benefits

The FAA analyzed the costs and benefits for the provisions related to PAO and the provisions related to training, testing, and checking in certain aircraft with special airworthiness certificates separately in the NPRM and presents the same analysis in this final rule. The changes from the NPRM to the final rule have minimal economic effects and do not change the results of the analysis. The final provisions related to PAO will impose no new costs, and the FAA determines the rule will reduce the costs for pilots conducting PAO to maintain their civil certificates and ratings.[4] Based on calculations presented in the Paperwork Reduction Act (PRA) section, the FAA estimates that the provisions related to training, testing, and checking will impose approximately $100,000 in total one-time costs (undiscounted) split roughly evenly between current LODA holders and the FAA over a period of two years. These costs stem from the requirement that current LODA holders who broadly offer certain aircraft with special airworthiness certificates for training reapply within two years of the effective date of this final rule.[5] However, the FAA expects cost savings from the elimination of LODA requirements for pilots receiving training in their own aircraft, the streamlined regulatory framework, and the safety benefits from greater access to specialized training in aircraft with special airworthiness certificates to exceed the initial costs. Overall, the FAA concludes that this rule will enhance safety with minimal impact on cost.

[4] The FAA does not maintain counts of pilots who fly PAO for federal, state, and local governments and there is insufficient data for the FAA to estimate the number of pilots affected by this final rule. See "How to Become a Government Pilot" in Flying Magazine by James Wynbrandt, Dec. 13, 2017. Available at: *www.flyingmag.com/how-to-become-government-pilot/* Last accessed Jul. 22, 2022.

[5] This requirement is discussed in further detail in section V. of this preamble.

II. Authority for this Rulemaking

The FAA's authority to issue rules on aviation safety is found in title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes the scope of the FAA's authority in more detail.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart iii, section 44701, General Requirements; section 44702, Issuance of Certificates; and section 44703, Airman Certificates. Under these sections, the FAA prescribes regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. The FAA is also authorized to issue certificates, including airman certificates and medical certificates, to qualified individuals. This final rule is within the scope of that authority.

Furthermore, section 517 of Public Law 115-254, Public Aircraft Eligible for Logging Flight Times, directs the Administrator to revise 14 CFR 61.51(j)(4) to include aircraft under direct operational control of forestry and fire protection agencies as public aircraft eligible for logging flight times. The FAA also codifies section 5604 of the 2023 NDAA, which directs that under certain conditions, flight training, testing, and checking in experimental aircraft does not require a LODA from the FAA.[6] This final rule implements those explicit Congressional directions.

Finally, this final rule responds to several provisions of the FAA Reauthorization Act of 2024. As noted previously, this final rule implements the public aircraft logging provisions of section 826 regarding forestry and firefighting flight time logging, as well as the provision in that section that, within 180 days of the date of enactment of the FAA

[6] James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. 117-263, 136 Stat. 2395, Section 5604 (Dec.23, 2022).

Reauthorization Act of 2024, the Administrator of the FAA shall make the regulatory changes necessary to implement section 826(a).[7]

This rule also responds to section 814 of the FAA Reauthorization Act of 2024 regarding letter of deviation authority.[8] Section 814 provides that a flight instructor, registered owner, lessor, or lessee of a covered aircraft shall not be required to obtain a letter of deviation authority from the Administrator to allow, conduct, or receive flight training, checking, and testing in such aircraft if the flight instructor is not providing both the training and the aircraft; no person advertises or broadly offers the aircraft as available for flight training, checking, or testing; and no person receives compensation for use of the aircraft for a specific flight during which flight training, checking, or testing was received, other than expenses for owning, operating, and maintaining the aircraft. For purposes of section 814, a covered aircraft means an experimental aircraft, a limited category aircraft, and a primary category aircraft.

While not proposed in the NPRM, this final rule revises the definition of "public aircraft" in 14 CFR 1.1 to align with the revised definition of "public aircraft" in 49 U.S.C. 40125(a)(2), as amended by section 923 of the FAA Reauthorization Act of 2024.[9] In section 923, Congress amended the definition of "public aircraft" in 49 U.S.C. 40125 as a matter of law. As the FAA has no discretion but to conform the definition of "public aircraft" in 14 CFR 1.1 to the amended definition in 49 U.S.C. 40125, the FAA finds prior notice and the opportunity for public comment on this definition revision unnecessary under the Administrative Procedure Act, 5 U.S.C. 553(b)(B). Therefore, the FAA finds good cause to forgo prior notice and the opportunity for public comment regarding this definition change.

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[7] FAA Reauthorization Act of 2024, Pub. L. 118-63, 138 Stat. 1332, Section 826 (b) (May 16, 2024).
[8] FAA Reauthorization Act of 2024, Section 814.
[9] FAA Reauthorization Act of 2024, Section 923.

III. Background

The NPRM published on June 23, 2023,[10] and the LODA advisory circular (AC) was added to the docket on June 29, 2023. The public comment period for the NPRM and AC was initially scheduled to close on August 22, 2023. However, in response to a request from the Experimental Aircraft Association for additional time to comment, the FAA extended the comment period until September 21, 2023, to provide the public additional time to thoughtfully analyze and respond to the NPRM and AC.[11] A brief overview of the NPRM follows.

A. Summary of the NPRM

1. Logging Flight Time in Public Aircraft Operations

Prior to this rule, only pilots conducting PAO for official law enforcement activities could log flight time under § 61.51(j)(4). However, section 517 of the FAA Reauthorization Act of 2018, Pub. L. 115–254 directed the FAA to expand PAO logging opportunities by permitting pilots to log flight time in aircraft under the direct operational control of forestry and fire protection agencies when such operations are conducted as PAO. Notwithstanding the limited scope of section 517, in the NPRM, the FAA proposed to amend § 61.51(j)(4) to allow logging of flight time for pilots engaged in any PAO in accordance with 49 U.S.C. 40102(a)(41) and 40125(a)(2).[12] Additionally, previous second-in-command (SIC) logging regulations did not address aircraft used in PAO that do not also hold airworthiness certificates issued by the FAA. The NPRM proposed to

[10] Public Aircraft Logging of Flight Time, Training in Certain Aircraft Holding Special Airworthiness Certificates, and Flight Instructor Privileges, 88 FR 41194 (Jun. 23, 2023). Corrected at 88 FR 44744 (Jul. 14, 2023).
[11] Public Aircraft Logging of Flight Time, Training in Certain Aircraft Holding Special Airworthiness Certificates, and Flight Instructor Privileges NPRM Extension of Comment Period, 88 FR 55959 (Aug. 17, 2023).
[12] 88 FR 41194 at 41196.

explicitly allow the logging of SIC time during PAO, with certain limitations, to encourage safety and promote consistency with the regulated community.[13]

2. Exceptions to Recent Flight Experience for Pilot-in-Command

Section 61.57 contains the recent flight experience requirements to maintain privileges to act as PIC under certain scenarios, including requirements to complete takeoffs and landings to continue to act as PIC of a flight that is carrying passengers. The FAA had previously issued legal interpretations indicating certain operations related to obtaining recent flight experience with an instructor on board are already permissible under existing regulations, notwithstanding the prohibition on passenger-carrying flights. The FAA determined the plain text of its regulations did not support the conclusions in these interpretations. Therefore, the NPRM rescinded the conflicting legal interpretations and proposed to add § 61.57(e)(5) to codify an exception that, in certain circumstances, would enable a person receiving flight training to act as PIC even if that person does not meet recent flight experience requirements.[14]

3. Flight Instructor Privileges

Sections 61.193 and 61.413 set forth the privileges of flight instructors and sport pilot instructors, respectively. During the course of this rulemaking, the FAA identified a need to clarify the types of operations that would be considered within the scope of a flight instructor's privileges in accordance with part 61. Although the FAA has historically encouraged flight instructors to conduct certain types of training operations (e.g., transition training), §§ 61.193 and 61.413 could be read to restrict such training. Therefore, in the NPRM, the FAA proposed clarifying amendments to §§ 61.193 and 61.413 to conform the regulations with current FAA policy and industry practice by

[13] *Id*. at 41196-41198.
[14] *Id*. at 41198, 41199.

explicitly permitting authorized flight instructors to conduct ground and flight training, and certain checking events, in addition to issuing endorsements.[15]

4. Flight Training is Carrying a Person for Compensation or Hire; Exception to Operating Certain Aircraft for the Purposes of Flight Training, Flightcrew Member Checking, or Flightcrew Member Testing

Previously, §§ 91.315, 91.319, and 91.325 generally prohibited flight training, checking, and testing when compensation is provided. In 2020, the FAA issued Warbird Adventures, Inc. an emergency cease and desist order restricting the operation of aircraft that held special airworthiness certificates carrying people for compensation or hire.[16] The operator brought a petition for review of the emergency order before the court.[17] On April 2, 2021, the court dismissed the petition for review of the cease and desist order.[18] Following the court's dismissal, several aviation industry groups sought clarification from the FAA on how the decision affected flight training in experimental aircraft since the prohibitory language of § 91.315 for limited category aircraft is the same as that in § 91.319 for experimental aircraft (notably, the same prohibitory language exists in § 91.325 for primary category aircraft). As a result of this court case, in the NPRM, the FAA proposed to clarify prohibitory language and to explicitly enable flight training, checking, and testing under certain conditions in aircraft holding special airworthiness certificates.

In the wake of the court ruling, the James M. Inhofe National Defense Authorization Act for 2023 (2023 NDAA) was adopted. The 2023 NDAA included a

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[15] *Id*. at 41199-41201.
[16] Emergency Cease and Desist Order Issued by the Federal Aviation Administration (July 28, 2020).
[17] Warbird Adventures, Inc. v. Fed. Aviation Admin., Petition for Review from an Emergency Cease and Desist Order Issued by the Federal Aviation Administration on July 28, 2020, Doc. No. 1854466 (D.C. Cir. 2020).
[18] The court stated: "A flight student is a "person." *Id.* § 91.315; *see also id*. § 1.1. When a student is learning to fly in an airplane, the student is "carr[ied]." *Id.* § 91.315. And when the student is paying for the instruction, the student is being carried "for compensation." *Id.*" Warbird Adventures, Inc. v. Fed. Aviation Admin., 843 F. App'x 331 (D.C. Cir. 2021).

self-implementing provision that amended the operating rules to permit certain flight training, testing, and checking in experimental aircraft without a letter of deviation authority (LODA). Likewise, section 814 of the FAA Reauthorization Act of 2024 (Pub. L. 118-63) directed that, under certain conditions, flight training, testing, and checking in limited, experimental, and primary category aircraft do not require a LODA from the FAA. The NPRM proposed to modify §§ 91.315, 91.319, and 91.325 to clarify prohibited operations, as well as direct stakeholders to a newly proposed regulation, § 91.326, that provided instruction on conducting certain operations for compensation or hire. The FAA also proposed to implement related miscellaneous amendments pertaining to recent flight experience, flight instructor privileges, flight training in certain aircraft holding special airworthiness certificates, and the related prohibitions on conducting these activities for compensation or hire.[19]

5. Experimental Light-Sport Aircraft

Lastly, on October 24, 2018, the FAA published an NPRM titled "Removal of the Date Restriction for Flight Training in Experimental Light Sport Aircraft."[20] For the reasons provided in the document withdrawing the "Removal of the Date Restriction for Flight Training in Experimental Light Sport Aircraft" NPRM,[21] the FAA withdrew the NPRM and, instead, developed this rule to resolve the discrepancy more broadly for all experimental aircraft.

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[19] 88 FR 41194 at 41201-41213.
[20] Removal of the Date Restriction for Flight Training in Experimental Light Sport Aircraft, 83 FR 53590 (Oct. 24, 2018).
[21] Removal of the Date Restriction for Flight Training in Experimental Light Sport Aircraft; Withdrawal, 88 FR 41045 (June 23, 2023).

B. Overview of Comments Received

The FAA received 22 comments to the NPRM.[22] Most of the comments were from advocacy or industry groups such as the Air Line Pilots Association, International (ALPA), the Aircraft Owners and Pilots Association (AOPA), the Association of Professional Warbird Operators, Inc. (APWO), the Commemorative Air Force (CAF), the Experimental Aircraft Association (EAA),[23] and the Helicopter Association International (HAI).[24] The Champaign Aviation Museum (CAM) and individual members of the public also commented on the docket. The general disposition of the comments favored proceeding with the NPRM, albeit with suggested changes.

IV. Discussion of Comments and the Final Rule

A. Logging Flight Time in Public Aircraft Operations (§ 61.51)

Section 61.51(j) states that, for time to be logged, it must be acquired in an aircraft that is identified as an aircraft under § 61.5(b) and is (1) an aircraft of U.S. registry with either a standard or special airworthiness certificate, (2) an aircraft of foreign registry with an airworthiness certificate that is approved by the aviation authority of a foreign country that is a Member State to the Convention on International Civil Aviation Organization (ICAO), (3) a military aircraft under the direct operational control of the U.S. Armed Forces, or (4) a public aircraft under the direct operational control of a Federal, State, county, or municipal law enforcement agency, if the flight time was

[22] Docket No. FAA-2023-1351. Of the 22 comments, two comments were duplicates and one commenter submitted four separate comments. Therefore, sixteen discrete commenters provided comments on the docket.

[23] The FAA notes that both the Association of Professional Warbird Operators and the Commemorative Air Force commented to indicate support of EAA's comments and recommended edits to the NPRM; additionally, EAA references Warbirds of America in their comment submission as a division of EAA representing pilots, owners, restorers, and enthusiasts of former military aircraft. For brevity, a reference to EAA should be understood to have the support of both of these organizations, as well as Warbirds of America as a division of EAA, rather than citing each of the organizations in every comment summary of this preamble.

[24] The FAA notes that on February 26, 2024, the commenter announced the renaming of Helicopter Association International (HAI) to Vertical Aviation International (VAI).

acquired by the pilot while engaged on an official law enforcement flight for a Federal, State, county, or municipal law enforcement agency. The FAA proposed to amend the list of qualified operations in § 61.51(j)(4) to allow logging of flight time for pilots engaged in any PAO in accordance with 49 U.S.C. 40102(a)(41) and 40125.

Relatedly, the SIC logging requirements in § 61.51 permit a person to log time as SIC based on the number of pilots required by the type certification of the aircraft or the regulations under which the flight is conducted or through an approved SIC pilot professional development program (PDP).[25] To adequately address aircraft used in PAO that do not necessarily meet these parameters, the FAA also proposed to add § 61.51(f)(4) to clarify that a person designated as second-in-command (SIC) by a government entity may log SIC time during PAO if the aircraft used is a large aircraft as defined in § 1.1, a turbo-jet powered airplane, or if the aircraft holds or originally held a type certificate that requires a second pilot.

As discussed in the NPRM,[26] the FAA finds that airline transport pilot (ATP) hours are largely related to exposure and experience through time building, whereas flight time necessary to meet minimum aeronautical experience requirements for private pilot, commercial, and instrument rating is more directly related to building specific skillsets and foundational knowledge. Therefore, the FAA proposed to add § 61.51(f)(4)(i) to explicitly state that SIC time logged under paragraph (f)(4) may not be used to meet the aeronautical experience requirements for the private or commercial pilot certificates or an instrument rating. Additionally, because ICAO standards do not recognize the crediting of flight time when a pilot is not required by the aircraft certification or the operating rules under which the flight is being conducted, the NPRM proposed to add § 61.51(f)(4)(ii) to delineate that an applicant for an ATP certificate who

[25] 14 CFR 61.51(f). As explained in the NPRM, under current § 61.51(d), an assigned second pilot in a PAO does not meet the requirements to log SIC time (see 88 FR 41194 at 41197).
[26] 88 FR 41194 at 41197.

logs SIC time under § 61.51(f)(4) would be issued an ATP certificate with a limitation. Specifically, the certificate's limitation would read, "Holder does not meet the pilot-in-command aeronautical experience requirements of ICAO," as prescribed under Article 39 of the Convention on International Civil Aviation if the applicant does not meet the ICAO requirements contained in Annex 1 "Personnel Licensing" to the Convention on International Civil Aviation.

Finally, the FAA proposed to amend §§ 61.159(e) and 61.161(d) to reference § 61.51(f)(4) to align the proposed revisions to § 61.51(f) with requirements applicable to pilots who apply for an ATP certificate with an ICAO limitation. This proposed revision to the aeronautical experience requirements of §§ 61.159 and 61.161 would reference § 61.51(f)(4) to allow a pilot to credit SIC time logged under PAO toward the total time for an ATP certificate.

1. Summary of the Comments

The FAA received six comments on § 61.51 as proposed in the NPRM. Three of the six commenters, AOPA, HAI, and an individual, generally supported the proposed revisions to § 61.51 without suggested changes. ALPA supported the proposal with suggested changes. One individual commenter opposed the proposal, and one individual's comment was out of the scope of this rulemaking.

HAI noted that the proposed changes would permit industry to track pilot experience more accurately without any detriment to safety. ALPA supported FAA's proposal to amend § 61.51(j) and stated that the amendment would not negatively impact safety or training. ALPA stated that the technical skill and proficiency required to operate aircraft in these types of operations require even higher training and certification standards than airborne law enforcement operations. However, ALPA expressed its concern that some agencies' training and certification standards may not be as rigorous as those of others. In this regard, ALPA clarified that its support is contingent on the final

rule stipulating that PAO operators have formalized and documented training and certification programs for pilots operating under PAO to log time toward certificates, ratings, and experience.

In addition, ALPA stated that it conditionally supported the proposed requirements for logging SIC time under PAO, emphasizing that SIC time should only be logged in large or turbojet powered multi-engine airplanes that are flown under PAO that do not also hold airworthiness certificates issued by the FAA. ALPA agreed that the proposed SIC provision would improve safety in the national airspace system (NAS) and is consistent with several National Transportation Safety Board (NTSB) recommendations. However, ALPA recommended that PAO operators establish formalized command and mentoring training requirements for their PICs for a second pilot to be able to log SIC time. ALPA noted that such a suggestion is consistent with the flightcrew and PIC requirements of § 135.99(c)(4). ALPA also supported the FAA's proposal to limit crediting of SIC time toward the ATP certificate only.

One individual commenter opposed the proposed update to § 61.51(j)(4). The commenter stated that permitting all PAO pilots to log flight time under § 61.51(j)(4) would include PAOs operating non-certificated aircraft, military surplus aircraft, Law Enforcement Support Office (LESO) aircraft, and Federal Excess Purchasing Program (FEPP) aircraft. The commenter explained that this inclusion would likely negatively impact safety, though they did not explain how, and recommended that public aircraft operators have formalized, documented training and certification programs for pilots operating under PAO to log time toward certificates, ratings, and experience. The commenter emphasized that the FAA must be able to certify the aircraft are maintained and flown to the current military or aircraft manufacturer standard for that aircraft.

Additionally, an individual commenter stated that since the NPRM would allow SIC time for PAO aircraft, the FAA should also reexamine allowing Naval Flight

Officers (NFO) and equivalent flying officers of other military services to log as SIC time. The commenter noted that NFOs occupied the right seat in aircraft equipped with full instrumentation and performed all pilot monitoring duties, navigated, assisted with checklists, and performed emergency procedures; however, since the NFOs were not rated pilots by military standards, none of the acquired flight hours can be credited to the aeronautical experience requirements. The commenter explained that the inability to log time accrued as an NFO makes it financially much more difficult for an NFO to transition to a career as an airline pilot.

The FAA did not receive any further comments on (1) the ICAO limitation proposed in § 61.51(f)(4)(ii) or (2) the crediting of time logged under PAO toward the total time for an ATP certificate proposed in §§ 61.159(e) and 61.161(d).

2. FAA Response

The FAA acknowledges ALPA's and an individual commenter's recommendations to require, first, formalized and documented training and certification programs for pilots operating under PAO to credit time toward certificates, ratings, and experience and, second, formalized command and mentoring training requirements for their PICs for a second pilot to be able to log SIC time, similar to § 135.99(c). However, the FAA declines to revise this final rule to include these recommendations because the FAA does not maintain regulatory authority over PAOs other than those requirements that apply to all aircraft operating in the NAS. Such authority is granted to a government entity by statute under 49 U.S.C. 40102(a)(41) and section 40125. Therefore, PAOs represent a significant transfer of responsibility to the government entity, who may implement certain training programs tailored to their specific governmental function and mission. Because the respective governmental entity is best situated to ensure proper training and operation of their PAO, and the FAA lacks the expertise to approve the broad gamut of PAO training programs that are specific to respective governmental

agencies, the FAA does not find that requiring a training or mentorship program as a prerequisite to logging of PAO flight time would enhance safety. Further, as explained in the NPRM, these operations are already occurring in the NAS. The FAA is simply revising the PAO logging requirements to allow PICs and SICs to log the flight time they have been accumulating, and continue to accumulate, toward meeting certain FAA recency and certification requirements.

In response to concerns that PAO aircraft are not certificated in accordance with FAA certification standards, the FAA notes its statutory authority to regulate the operation and maintenance of civil aircraft used in air commerce and lack of statutory authority to regulate public aircraft, except as related to operations in the NAS.[27] The ability to determine the airworthiness of "public aircraft" is transferred to the governmental entity during qualified PAOs.[28] As stated in AC 91-91, the FAA recommends that public aircraft operators use one of the inspection or maintenance programs specified in § 91.409 to determine airworthiness, but the FAA cannot make this a requirement. This shift in responsibility for safety standards for inspections and maintenance from the FAA to the governmental entity conducting a PAO neither impacts an aircraft's ability to operate in the NAS nor a PAO pilot's ability to log flight time as mandated by Congress. Based on the reasons discussed previously, this final rule does not add the commenter's recommendation.

Finally, this final rule does not adopt the recommendation to allow NFOs and equivalent flying officers of military services to log SIC flight time because it is outside the scope of this rulemaking. In the NPRM, the FAA proposed to expand PAO logging

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[27] *See* FAA Advisory Circular 91-91, Maintaining Public Aircraft. www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/1030146.

[28] *See* FAA Advisory Circular 91-91, Maintaining Public Aircraft. www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/1030146.

opportunities by permitting pilots to log flight time while conducting a governmental function outlined in 49 U.S.C. 40125. This is dissimilar to the request to allow NFOs and equivalent military personnel to log SIC pilot time because NFOs do not undergo the training nor perform the functions of a Naval pilot. Rather, NFOs function as navigators, lookouts, and weapons officers. Although there may be some functions that overlap with those of a Naval pilot, they are not equivalent to the responsibilities and duties of a PIC or SIC and, therefore, will not be considered as such under civilian regulations. Since the commenter's request is unrelated to the provisions in the NPRM, the FAA will not integrate the suggested change into this final rule.

3. Revisions to Align with ICAO Requirements

As previously stated, the NPRM proposed to add § 61.51(f)(4)(ii) to delineate that an applicant for an ATP certificate who logs SIC time under § 61.51(f)(4) would be issued an ATP certificate with a limitation. Although the NPRM proposed to require this limitation for all flight time logged in accordance with § 61.51(f)(4), the final rule is changed to align precisely with ICAO requirements. Specifically, the final rule will not require the limitation to be added to a pilot's ATP certificate when the SIC flight time was logged in an aircraft type certificated for two pilots. This change is in accordance with ICAO Annex 1 (Personnel Licensing), section 2.1.9.3, which states, "[t]he holder of a pilot license, when acting as a co-pilot at a pilot station of an aircraft certificated to be operated with a co-pilot, shall be entitled to be credited in full with this flight time towards the total flight time required for a higher grade of pilot license." Persons logging flight time in aircraft that are not type certificated for two pilots will continue to require the ICAO limitation to be added to their ATP certificate. As noted in the NPRM, an applicant would be entitled to an ATP certificate without the ICAO limitation specified under this provision when the applicant presents satisfactory evidence of having met the

ICAO requirements (and otherwise meets the applicable aeronautical experience requirements).

Additionally, during the pendency of this rulemaking, the FAA noted an inadvertent error in the proposed ICAO limitation of § 61.51(f)(4)(ii) by excluding a reference to § 61.161, which sets forth the aeronautical experience requirements for rotorcraft category, helicopter class rating on an ATP certificate. Specifically, § 61.51(f)(4) permits a person to log SIC time if the person is designated by a government entity as an SIC when operating in accordance with § 61.51(j)(4), provided the aircraft used is a large aircraft (in addition to other conditions set forth within the paragraph (f)). By definition, a large aircraft can include a helicopter,[29] which would necessitate an ICAO limitation for the ATP certificate with rotorcraft category, helicopter class rating mirroring that of an airplane category ATP certificate. While the FAA proposed the ICAO limitation provision in the NPRM via § 61.161(d), the aligning reference was inadvertently excluded from § 61.51(d)(4)(ii). This final rule corrects the inadvertent omission.

The FAA adopts §§ 61.51(f), 61.159(e), and 61.161(d), as proposed, subject to the revisions described in this section.

B. Revision of the Definition of "public aircraft" (§ 1.1)

Section 923 of the FAA Reauthorization Act of 2024 (Pub. L. 118-63) amended the definition of "public aircraft" found in 49 U.S.C. 40125(a)(2). Specifically, section 923 amends 49 U.S.C. 40125(a)(2), which sets forth the definition of "governmental function," to include: "biological or geological resource management (including data collection on civil aviation systems undergoing research, development, test, or evaluation at a test range (as such term is defined in 49 U.S.C. 44801)), infrastructure inspections, or

[29] Under 14 CFR 1.1, a "large aircraft" means aircraft of more than 12,500 pounds, maximum certificated takeoff weight.

any other activity undertaken by a governmental entity that the Administrator determines is inherently governmental."[30]

The regulations in 14 CFR 1.1 set forth the definitions for subchapters A through K of title 14, chapter I, including a definition for public aircraft. Within the definition for "public aircraft," paragraph (1)(ii) sets forth the definition of "governmental function" for the sole purpose of determining public aircraft status, which aligns with the definition of "governmental function" as set forth in 49 U.S.C. 40125(a)(2). Because this final rule permits the logging of flight time for pilots engaged in any PAO in accordance with 49 U.S.C. 40102(a)(41) and 40125 (i.e., the revised statute), which contains the statutorily revised definition, this final rule revises the 14 CFR 1.1 definition of public aircraft to align with the statutory definition in revised 49 U.S.C. 40125(a)(2).

C. Exceptions to Recent Flight Experience for Pilot in Command (§ 61.57(e))

Section 61.57 contains recent flight experience requirements to maintain privileges to act as PIC under certain scenarios, including requirements to complete takeoffs and landings to continue to act as PIC of a flight that is carrying passengers. The FAA proposed to add § 61.57(e)(5) to codify an exception that, in certain circumstances, would enable a person receiving flight training to act as PIC, even if that person does not meet the recent flight experience requirements for carrying passengers under § 61.57(a) or (b). This person would be required to meet all other requirements to act as PIC, except for the recent flight experience requirements of § 61.57(a) or (b), and only the authorized instructor and person receiving training could be on board the aircraft. The FAA proposed the change in response to a disparity created between several legal interpretations[31] that concluded, unsupported by the regulations, that a flight instructor

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[30] 49 U.S.C. 40125(a)(2) as amended by section 923 of Public Law 118-63.

[31] The FAA rescinded Legal Interpretation to Kris Kortokrax (Aug. 22, 2006), Legal Interpretation to John Olshock (May 4, 2007), Legal Interpretation to Roger Schaffner (May 5, 2014), and Legal Interpretation to E.V. Fretwell (Sept. 18, 1995) on July 23, 2023, 30 days after publication of the NPRM, because they were not supported by FAA regulations. See 88 FR 41194 at 41199.

and a person receiving flight training are not considered passengers to one another. This final rule adds the definition of "passenger" and addresses how those legal interpretations relate to the requirements of § 61.57, as explained in section VI.F of this preamble.

HAI and ALPA both supported the proposed amendment to § 61.57(e). HAI described the FAA's approach in § 61.57(e) as common sense, resulting in reduced confusion, increased training opportunities, and elimination of administrative burden on pilots. ALPA supported the proposal, provided no passengers are carried on board and the purpose of the flight is to establish recency of experience. The FAA did not receive any opposing comments nor recommended changes.

Therefore, the FAA adopts § 61.57(e)(5) as proposed. The FAA notes that AOPA urged the FAA to reconsider its withdrawal of existing interpretations before the effective date of any final rule. As previously noted, these legal interpretations were, in fact, withdrawn prior to this final rule because they were unsupported by the regulations in place at that time. This final rule maintains the action taken in regard to the legal interpretations, but the adoption of new § 61.57(e)(5) will succinctly codify the circumstances in which a person receiving flight training may act as PIC, even if that person does not meet the recent flight experience requirements for carrying persons under § 61.57(a) or (b), curing any uncertainty caused by the rescission of the legal interpretations during the pendency of this rulemaking.

D. Flight Instructor Privileges (§§ 61.193 and 61.413)

Sections 61.193 and 61.413 set forth the privileges of flight instructors and sport pilot instructors, respectively. Under §§ 61.193(a)(1) through (9) and 61.413(a)(1) through (9), an authorized flight instructor may train and provide endorsements required for certificates, ratings, operating privileges, recency of experience requirements, and tests. The areas do not currently address specific elective and specialized training

activities that the FAA encourages but which are not required to meet FAA regulations.[32] To conform those regulations with FAA policy and industry practice, the FAA proposed three amendments to §§ 61.193 and 61.413. First, the FAA proposed to modify the introductory text of §§ 61.193(a) and 61.413(a) to provide that authorized flight instructors may conduct ground and flight training, and certain checking events,[33] in addition to issuing endorsements. Second, the FAA proposed to add maintaining or improving skills for certificated pilots to the list of flight instructor privileges found in §§ 61.193(a)(7) and 61.413(a)(6) to succinctly provide that flight instructors are authorized to conduct certain specialized and elective training intended to advance a pilot's preexisting flying knowledge or skills but that may not require specific endorsements (i.e., not the initial development or building blocks of pilot knowledge). Finally, the FAA proposed to add §§ 61.193(c) and 61.413(c) to limit the privileges afforded to authorized flight instructors under these provisions from permitting operations that would require an air carrier or operating certificate or specific authorization from the Administrator (e.g., solely providing transportation, conducting commercial air tours under the guise of flight training, or offering introductory or orientation flights to non-pilots who have no intention of or interest in continuing training toward a certificate or rating).[34] Aside from permitting an authorized flight instructor to conduct certain checking events and training related to maintaining or improving skills for certificated pilots, the FAA did not propose to revise any other requirements within §§ 61.193 and 61.413.

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[32] For example, transition training to a new make and model for which a pilot is already rated but has never flown or lacks familiarity, and conventional instrumentation to technically advanced aircraft training. See 88 FR 41200 for additional discussion on additional recommended elective and training activities in practice that this final rule will now explicitly facilitate.

[33] For example, instrument proficiency checks (IPC), night vision goggle proficiency checks (NVG), sport pilot proficiency checks, and part 141 checks.

[34] For additional discussion on how the FAA will ascertain whether an operation is considered flight training, see 88 FR 41194 at 41201.

1. Summary of the Comments

Two industry groups responded to the proposed revisions to flight instructor privileges. ALPA fully supported the proposal, citing that the changes encourage pilots to seek continuing instruction and elective training. AOPA broadly supported the proposal, similarly stating that the efforts would promote aviation safety by encouraging pilots to obtain elective flight training and incentivize flight instructors to provide such, but suggested certain revisions to the proposal. Specifically, AOPA, first, sought clarification on whether certain flight activities would be included in the proposed expansion of privileges and, second, urged the FAA to expand certain types of training beyond only pilot training aimed at maintaining and improving skills for certificated pilots.

First, AOPA recommended that the FAA specifically allow a flight instructor to train and provide endorsements as may be required by an insurer or an entity providing aircraft, such as a flying club or a Fixed Base Operator (FBO) authorized by an airport to provide services for general aviation. While AOPA ceded that these privileges may already be included in the proposed addition to §§ 61.193(a)(7) and 61.413(a)(6), AOPA requested that the FAA specifically clarify whether these activities are included within the privileges afforded to flight instructors to avoid confusion.

Additionally, AOPA agreed that elective flight training is highly beneficial to pilots with existing skills but emphasized that such training can be beneficial to any individual regardless of experience level and would not have a negative impact on safety. Specifically, AOPA cited the FAA's position in the preamble of the NPRM that the proposed modifications to §§ 61.193(a)(7) and 61.413(a)(6) are only available to "train[] pilots to maintain or advance preexisting skills, not the initial inception or development of pilot knowledge," stating that the FAA specifically notes that "[t]he proposed training does not contemplate learning basic flying skills, as in the case of a student pilot."[35]

[35] See 88 FR 41194 at 41200.

AOPA asserted that a private pilot who has no intention of performing aerobatics could still learn potentially lifesaving information concerning aerodynamics and upset recovery by receiving training in aerobatics and that, similarly, a student pilot living in a mountainous area must receive training in mountain flying in the interests of safety. AOPA concluded that these operations would be prohibited by the proposed rule.[36] To this point, AOPA opined that the proposed rule would undermine the ability to inspire a new generation of pilots with introductory flights that go beyond basic flying skills, which would be stifled by experience level parameters, providing an example that individuals interested in receiving flight instruction, but who do not yet have a certificate, discover their interest in aviation after a training flight where an instructor could demonstrate more energetic maneuvers before inviting the student to take the controls. AOPA noted that the proposed rule does not adequately address legitimate safety rationale for the limitations and, rather, appears to only be related to the FAA's concern that an operator who should otherwise hold a commercial air tour authorization could try to disguise itself as a flight training provider.

2. FAA Response

In response to AOPA's request to clarify whether flight instructors are authorized to train and provide endorsements that may be required by an insurer or an entity providing an aircraft, the FAA notes that such training and endorsements are not necessarily precluded under the proposed amendments to §§ 61.193(a)(7) and 61.413(a)(6). Specifically, the proposed additions are general in nature, applying to any training to maintain or improve the skills of a certificated pilot, including specialized flight training that does not require an endorsement (e.g., transition training to ensure that certificated pilots are proficient and safe). Notably, the FAA does not have a regulatory

[36] The FAA notes that this is an erroneous conclusion, but further discusses these privileges in the immediately following section of this preamble.

requirement for a flight instructor to conduct a pilot checkout for insurance purposes, nor do the proposed amendments to the rule directly address insurance or other pilot checkouts required by industry.[37] Rather, the amended rule could consider a pilot checkout to be flight training if flight training is given during the checkout. Conversely, if no flight training is provided during the checkout, then the flight would not be considered instruction.[38] Thus, the NPRM proposed (as adopted by this final rule) to permit flight instructors to provide elective training to maintain or improve the skills of certificated pilots and train and issue endorsements under part 61 that an insurer or entity providing an aircraft may require, provided the activity is not merely a pilot checkout that does not include training. If training to maintain or improve skills of a certificated pilot were to occur during an insurance checkout, the FAA would consider that training to be within the scope of the proposed rule. Notably, insurance is generally not regulated by the FAA, and, therefore, an explicit authorization is not appropriate to add into this final rule.

Furthermore, the FAA finds elective training such as aerobatic and mountain flying training beneficial for certificated pilots with existing skills; however, the FAA does not believe that such training would be beneficial to all individuals, regardless of experience level (i.e., persons who hold no pilot certificate). As discussed in the NPRM, the training contemplated under proposed §§ 61.193(a)(7) and 61.413(a)(6) is purposefully broad and may include transition training, aerobatic training, formation training, and mountain flying, none of which require an endorsement. Already-certificated pilots, in particular, may find training of this nature to be highly beneficial.

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[37] "Pilot checkout" is a general term used by the aviation industry to describe an event enabling a pilot to demonstrate competency in a specific aircraft before being allowed to fly an aircraft provided by another entity. For example, "pilot checkout" includes insurance checkouts (also called rental checkouts), which occur when aviation insurance companies and persons offering their aircraft for rent require a pilot to fly with an instructor prior to renting an aircraft for the first time, regardless of whether the pilot is technically qualified to operate the aircraft. This checkout affords the insurance company and owner of the aircraft an opportunity to have a pilot's skills evaluated as an additional layer of protection from aircraft damage.

[38] See Legal Interpretation to Charles Walters (May 7, 2018), addressing the distinction between a checkout and training.

As stated in the NPRM, the proposed training did not contemplate learning basic flying skills, as in the case of a student pilot (in other words, the only population of pilots that may utilize §§ 61.193(a)(7) and 61.413(a)(6) are already-certificated pilots via the conditional language "of a certificated pilot"). The FAA has long recognized that the building block approach to flight training is the safest and most effective method to develop a learner's knowledge and skills.[39] The traditional framework for a pilot follows an incremental path to build piloting skills through an iterative series of training activities with a flight instructor, accumulation of other flight experience, and successful completion of a practical test with an evaluator. The FAA finds that individuals with little to no pilot knowledge, skills, or experience should become certificated pilots proficient in basic pilot skills before pursuing elective or specialized training activities because these activities require the trainee to at least possess the knowledge to safely operate the aircraft prior to engaging in more advanced skills. Specifically, persons will be required to possess at least a fundamental pilot certificate (e.g., recreational pilot certificate or sport-pilot certificate) to be eligible to receive this type of training, as these persons have demonstrated a level of proficiency to the FAA through the testing process. Individuals who are not pilots may not have a full awareness of the risks involved. For example, aerobatic skills training includes maneuvers that require application of advanced aerodynamic concepts, as well as the ability to manage aircraft speed, orientation, energy, and altitude to be performed safely. Persons who do not hold a pilot certificate would likely not yet have the knowledge or skills necessary to perform these types of maneuvers and, further, have not yet demonstrated to the FAA through the certification process that they possess the minimum knowledge and skills to safely operate the aircraft in the NAS, even in non-aerobatic flight. Common flight instruction risks include pilot risks, aircraft

[39] See Airplane Flying Handbook (FAA-H-8083-3C), Chapter 1, p 1-7, Paragraph 1: Introduction, for discussion on the building block method of instruction.

risks, and environmental risks.[40] Consequently, demonstrating complicated maneuvers prior to transferring the controls to a trainee not holding a pilot certificate increases safety risks and potentially undermines mentoring of risk management concepts. Risk management should be mentored and taught at the very start of flight training and should be integrated into any flight training.[41] Since using the building block method of instruction based on prior lessons learned is the safest and most effective method to elevate a learner's knowledge and skills, the FAA does not consider demonstrating or teaching more advanced skills (e.g., aerobatic maneuvers) an appropriate building block of instruction for initial flight training for non-certificated pilots.

For these reasons, the FAA declines to expand the privileges of flight instructors to include elective or specialized training to non-certificated pilots and finds this limitation would not undermine the ability to inspire a new generation of pilots, as flight training pathways for new pilots already exist in the airman certification framework. In response to AOPA's comment that the limitations on the proposed expansion of flight instructor privileges appear to only be related to the FAA's concerns that an operator who should otherwise hold a commercial air tour authorization could disguise itself as a flight training provider, the FAA reiterates that, as discussed, the rationale for these limitations is based on public and trainee safety needs, lack of potential risk awareness, and the additional risks discussed herein and in the NPRM. In the absence of any safety data or documented safety cases to support a claim that an individual at any experience level

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[40] For example, pilot risks associated with flight instruction may include instructor, trainee, and aeromedical risks. Although a trainee will generally be less proficient than the instructor and may react unexpectedly, instructors may have qualification, currency, and proficiency issues. Additionally, the state of both the instructor and trainee's medical health, inadequate rest prior to flight, or illness are sources of potential risk. Aircraft risks increase if the instructor is not aware of inoperative systems and equipment or overdue aircraft inspections. Environmental risks may include risks generated by the weather, terrain, and night operation hazards, and also include airports, airspaces, and other environmental factors. See Instructor's Handbook (FAA-H-8083-9) Chapter 10, p 10-6 & 10-7: Common Flight Instruction Risks.

[41] Aviation Instructor's Handbook (FAA-H-8083-9) Chapter 10, p 10-2: Teaching Practical Risk Management during -Flight Instruction.

benefits from such advanced training activities, the FAA declines to expand the proposed revisions to §§ 61.193(a)(7) and 61.413(a)(6).

After considering comments, the FAA adopts the revisions to §§ 61.193 and 61.413 as proposed in the NPRM to clarify the privileges an authorized flight instructor may exercise.

E. Flight Training is Carrying a Person for Compensation or Hire

The FAA's proposal reinforced its longstanding position that, although excepted from the part 119 requirement to obtain an air carrier or commercial operator certificate, compensated flight training in limited, experimental, and primary category aircraft is an operation that involves the carriage of a person for compensation or hire. Specifically, as discussed at length in the NPRM,[42] the restrictions on operating aircraft that hold special airworthiness certificates carrying people for compensation or hire recently came under review as a result of an emergency cease and desist order issued to Warbird Adventures, Inc. by the FAA in 2020.[43] Following the court's dismissal of the petition for review of the cease and desist order, the FAA, first, published a Notification of Policy in the *Federal Register* laying out its position that when compensation is provided for flight training, it is contrary to the prohibition on operating an aircraft carrying a person for compensation or hire even when no compensation is provided for the use of the aircraft[44] and, second, announced it would rescind conflicting agency guidance. Additionally, the announcement memorialized the intention to consider a future rulemaking to remove obstacles to flight training for owners of aircraft with certain special airworthiness certificates while maintaining prohibitions on broadly offering these aircraft for flight training to the public (i.e., this rulemaking).

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[42] 88 FR 41194 at 41201.
[43] *Warbird Adventures, Inc.* v. *Fed. Aviation Admin.*, Petition for Review from an Emergency Cease and Desist Order Issued by the Federal Aviation Administration on July 28, 2020, Doc. No. 1854466 (D.C. Cir. 2020).
[44] Notification of Policy for Flight Training in Certain Aircraft, 86 FR 36493 (Jul. 12, 2021).

In proposing this rulemaking, the FAA noted conflicts between the general prohibitions in §§ 91.315, 91.319, and 91.325 (applicable to limited category, experimental, and primary category aircraft, respectively) and operating limitations placed on these aircraft during the aircraft certification process, legal interpretations, and guidance related to the carriage of persons or property aboard these aircraft during operations involving compensation or hire. Specifically, the FAA detailed that terms within these regulations are either broadly defined (e.g., operate,[45] person[46]) or have been broadly interpreted over time (e.g., compensation[47]), resulting in obstacles to certain flight training that the FAA did not intend.

Therefore, the proposed rule sought to narrow and more clearly define the types of operations that are precluded in aircraft holding certain special airworthiness certificates by refining the regulatory language in §§ 91.315, 91.319,[48] and 91.325 to clearly define operations that would generally require an air carrier or commercial operator certificate (or an exception therefrom), while explicitly enabling flight training, checking, and testing. Specifically, except as provided in proposed § 91.326 (which is further discussed in this preamble), the proposed amendments would prohibit conducting operations that: (1) require an air carrier or commercial operator certificate issued under part 119; (2) are listed in § 119.1(e); (3) require management specifications for a

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[45] With respect to an aircraft, the word "operate" is broadly defined in § 1.1 as "use, cause to use or authorize to use aircraft, for the purpose (except as provided in § 91.13 of this chapter) of air navigation including the piloting of aircraft, with or without the right of legal control (as owner, lessee, or otherwise)." As explained in the NPRM, an aircraft may be "operated" by more than one person for purposes of part 91 regulations. See 88 FR 41194 at 41202.

[46] Pursuant to § 1.1, "person" is defined as an individual, firm, partnership, corporation, company, association, joint-stock association, or governmental entity. It includes a trustee, receiver, assignee, or similar representative of any of them.

[47] *See* Legal Interpretation to Joseph Kirwan (May 27, 2005). Compensation "does not require a profit, a profit motive, or the actual payment of funds." Rather, compensation is the receipt of anything of value. *See also* Legal Interpretation to John W. Harrington (Oct. 23, 1997); *Blakey* v. *Murray*, NTSB Order No. EA–5061 (Oct. 28, 2003). The FAA has previously found that reimbursement of expenses (fuel, oil, transportation, lodging, meals, etc.), accumulation of flight time, and goodwill in the form of expected future economic benefit could be considered compensation.

[48] The FAA notes that the NPRM proposed a miscellaneous, nonsubstantive amendment to § 91.319(d)(3) to use "air traffic control" in place of "control tower." The FAA did not receive comment on this proposal and adopts the revision as proposed.

fractional ownership program issued in accordance with subpart K of part 91; or (4) are conducted under part 129, 133, or 137. Similarly, the NPRM proposed to amend § 91.327 to be inclusive of checking and testing in aircraft having a special airworthiness certificate in the light-sport category, where it previously only enabled flight training, through paragraph (a)(2).

1. Summary of the Comments

AOPA supported the FAA's efforts to clarify the operating limitations of limited, experimental, and primary category aircraft but argued that the premise for these changes is based on the flawed conclusion that flight instruction categorically equates to the carriage of persons for compensation or hire. AOPA explained that the FAA has repeatedly held that compensated flight instruction does not equal to the carriage of persons for compensation or hire, providing several examples. First, AOPA detailed a 1992 final rule for the establishment of primary category aircraft as specifically permitting the use of primary category aircraft for flight instruction while simultaneously prohibiting the carriage of passengers or property for compensation or hire.[49] Second, AOPA stated that a 1997 final rule explained why a flight instructor acting as PIC need only hold a third-class medical certificate to conduct flight instruction by stating "a certificated flight instructor who is acting as pilot in command or as a required flight crewmember and receiving compensation for his or her flight instruction is not carrying passengers or property for compensation or hire, nor is he or she, for compensation or hire, acting as pilot in command of an aircraft."[50] Third, AOPA cited Congress as recognizing that flight training is not considered to be carrying a passenger for compensation or hire when it enacted section 2307 of the FAA Extension, Safety, and

[49] See Primary Category final rule, 57 FR 41360 (Sep. 9, 1992).
[50] Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules final rule, 62 FR 16220, 16242 (Apr. 4, 1997).

Security Act of 2016, a position the FAA agreed with when it promulgated the "BasicMed" regulations implementing this law.[51]

Therefore, AOPA recommended that the FAA adopt regulations specifically clarifying that flight instruction does not equate to the carriage of persons or property for compensation or hire. In addition, AOPA referenced section 243 of proposed H.R. 3935.[52] Likewise, AOPA argued that since the FAA views all compensated flight instruction as carrying a person for compensation or hire, every aircraft used for compensated flight instruction must comply with § 91.409(b), which contains aircraft inspection requirements, regardless of whether the aircraft is provided by the flight instructor. AOPA further explained that, based on the FAA's new proposed interpretation in the NPRM, the second condition in § 91.409(b), under which a 100-hour inspection is required, is meaningless. Finally, AOPA noted that this interpretation would effectively prohibit a flight instructor from providing instruction for formation flying since § 91.111(c) prohibits any person from operating an aircraft carrying passengers for hire in formation flight.

2. FAA Response

The FAA declines to align with AOPA's position that flight instruction does not equate to the carriage of persons or property for compensation or hire. The FAA maintains the position that flight training for compensation constitutes carriage of a person for compensation or hire but adopts this final rule to specifically define types of operations under which persons or property could be carried for compensation or hire

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[51] AOPA specifically quoted, "The FAA has found that, in conducting flight training, the PIC is not carrying passengers or property for compensation or hire, nor is acting as PIC of an aircraft for compensation or hire," from the BasicMed final rule. See Alternative Pilot Physical Examination and Education Requirements final rule, 82 FR 3149 at 3155 (Jan. 11, 2017).

[52] Section 243 of H.R.3935, Securing Growth and Robust Leadership in American Aviation Act, proposed that the FAA adopt the position that an authorized flight instructor providing student instruction, flight instruction, or flight training shall not be deemed to be operating an aircraft carrying persons or property for compensation or hire. However, this section was not enacted as part of the FAA Reauthorization Act of 2024, Public Law 118-63.

(including certain flight training). The FAA notes that in its comment, AOPA used the terms "carriage of persons" and "carriage of passengers" interchangeably. In recent related litigation, the FAA explained its position that "persons" is a broader term than "passengers" and specified that the FAA has consistently drawn a distinction between regulations that refer to the carriage of passengers and the carriage of persons.[53] Additionally, in the litigation, the FAA stated, "[it] has consistently drawn a distinction between regulations that refer to the carriage of passengers, which the FAA does not interpret to include flight students, and those that prohibit the carriage of persons, which the FAA interprets to include any person, including flight students."

Regarding AOPA's reference to section 243 of H.R. 3935 for guidance, the FAA notes that the cited proposed legislative language was not enacted.[54] Without a congressional mandate, the FAA does not intend to adopt any regulation specifying flight instruction does not equate to the carriage of persons or property for compensation or hire. The FAA notes that AOPA's recommendation is incongruent with a recent court ruling, wherein the court determined that: "A flight student is a 'person.' Id. § 91.315; see also id. § 1.1. When a student is learning to fly in an airplane, the student is 'carried.' Id. § 91.315. And when the student is paying for the instruction, the student is being carried 'for compensation.'"[55]

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[53] The history of § 91.315 confirms that the regulation prohibits the carriage of persons in exchange for compensation for any purpose, including flight training. As originally enacted, that regulation contained language that only authorized flights "in which neither passengers nor cargo are carried for compensation or hire." However, § 91.315 has been amended several times to expand the regulation to prohibit the carriage of "persons" and not just "passengers." Notably, the FAA does not interpret its regulations prohibiting the carriage of passengers to consider flight students as passengers. However, the FAA interprets its regulations prohibiting the carriage of persons to include any person, including flight students. The decision to expand § 91.315's predecessor regulation to prohibit the carriage of persons, not just passengers, for compensation or hire therefore supports the distinction between carriage of persons and carriage of passengers. See Warbird Adventures, Inc. v. Fed. Aviation Admin., 2020 WL 7260623 (C.A.D.C.) (Appellate Brief).

[54] Public Law 118-63, the FAA Reauthorization Act of 2024, did not contain the language referenced in AOPA's comment.

[55] Warbird Adventures, Inc. v. Fed. Aviation Admin., 843 F. App'x 331 (D.C. Cir. 2021).

The FAA also disagrees with AOPA's interpretation of § 91.409(b). Section 91.409 sets forth certain inspection requirements. Paragraph (b) requires, in pertinent part, that, except as provided in § 91.409(c),[56] no person may operate an aircraft carrying any person (other than a crewmember) for hire, and no person may give flight instruction for hire in an aircraft which that person provides, unless within the preceding 100 hours of time in service the aircraft has received an annual or 100-hour inspection and been approved for return to service in accordance with part 43 or has received an inspection for the issuance of an airworthiness certificate in accordance with part 21. The FAA's position and § 91.409(b) are not contradictory. Rather, the regulation provides specificity to the inspection expectations when a person only provides flight instruction compared to when a person provides both flight instruction and the aircraft. Specifically, the regulation intends that, despite the requirement for a 100-hour inspection when any person is carried for hire, a 100-hour inspection is only required for flight training when the person giving the instruction for hire also provides the aircraft.[57] While the FAA cedes that the regulation could have been more strongly written, and may consider a revision in a separate rulemaking to except circumstances rather than affirmatively stating such, this position has been explicitly reiterated in Legal Interpretations.[58]

AOPA's concern that a flight instructor would be prohibited from providing instruction for formation flying has been addressed by the addition of the definition of

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[56] Section 91.409(b) does not apply to (1) an aircraft that carries a special flight permit, a current experimental certificate, or a light-sport or provisional airworthiness certificate; (2) an aircraft inspected in accordance with an approved aircraft inspection program under part 125 or 135 and so identified by the registration number in the operations specifications of the certificate holder having the approved inspection program; (3) an aircraft subject to the requirements of § 91.409(d) and (e); or (4) turbine-powered rotorcraft when the operator elects to inspect that rotorcraft in accordance with § 91.409(e).

[57] See Part 91 – General Operating and Flight Rules, 35 FR 4116 (March 5, 1970) which clarified that the caveat "in an aircraft which that person provides" was added to clarify the 100-hour inspection requirement for the flight instruction for hire was intended for those instances in which the person providing flight instruction for hire also provides the aircraft in which the instruction is given. The preamble indicates this clarification was needed because the regulation had been misunderstood by many people to mean that they could not receive flight instruction in an aircraft owned or leased by them if the flight instructor received compensation for their services unless the aircraft had met the 100-hour inspection requirement.

[58] E.g., Legal Interpretation to Greenwood-Fly by Knight (Oct. 1, 2014) (reiterated in Greenwood-Fly by Knight, Oct. 9, 2015).

"passenger" in § 61.1 as part of this final rule, as discussed in more detail in the subsequent section of this preamble. While AOPA noted that § 91.111(c) generally prohibits any person from operating an aircraft carrying passengers for hire in formation flights, the FAA has excluded persons providing or receiving flight training from its definition of "passenger" in § 61.1.[59] Therefore, formation flight training will not be prohibited in accordance with this final rule.

For these reasons, this final rule does not make any revisions based on AOPA's comments regarding the carriage of persons for compensation or hire as it relates to compensated flight training.

F. New Definition of Passenger (§ 61.1(b)) and Related Changes (§ 61.57)

Although the FAA has not previously defined "passenger" in regulation, the NPRM analyzed the FAA's historical interpretation of the term. Previous FAA legal interpretations[60] have stated that a flight instructor and a person receiving flight training are not considered passengers to one another. However, the NPRM concluded that those FAA legal interpretations had no regulatory basis to assert such a position, and the FAA has since rescinded those interpretations. While the NPRM did not assert that a flight instructor and a person receiving flight training are not passengers to one another, it sought to clarify when certain operations involving such persons may be conducted.

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[59] The FAA notes that the definitions set forth in § 61.1 are for the purpose of part 61 (see § 61.1(b)). However, for purposes of airman certification and training, it is common practice to apply certain part 61 definitions to related certification and training parts and sections within Title 14 (e.g., part 61 definitional application of "authorized instructor" to part 141). The FAA contemplated a global definition for "passenger," but does not find it appropriate at this time to memorialize the definition of "passenger" in part 1 to apply to all of Title 14 due to the possible unintended and unstudied repercussions in other parts that would be out of scope for this rulemaking. In this case, it will be FAA policy to apply the part 61 definition of "passenger" to § 91.111(c) because the formation training is taking place during a part 61 flight training event. As previously stated in this preamble, the training contemplated under §§ 61.193(a)(7) and 61.413(a)(6) may include formation training.

[60] Legal Interpretation to Kris Kortokrax (Aug. 22, 2006), concluding that a flight instructor who has not met the recent night takeoff and landing experience in § 61.57(b) should be able to accompany a pilot without being considered a passenger; Legal Interpretation to Roger Schaffner (May 5, 2014), concluding that a flight instructor with an expired medical certificate may instruct a person who is a private pilot with a current medical certificate and flight review, even if that person is not current to carry passengers per § 61.57(a) because the instructor is not considered a passenger when the instructor is present specifically to train the person receiving instruction.

1. Summary of the Comments

AOPA asserted that the FAA does not offer a reasoned explanation to depart from the established view that a flight instructor and a trainee are not passengers to one another. According to AOPA, the FAA indicated in the NPRM that decades of its own policy and interpretations are incorrect. AOPA argued that the FAA failed to consider the plain meaning of the term "passenger," which it defines from two legal dictionaries as "an occupant of a vehicle other than the person operating it or a member of the crew." AOPA contended that because both instructor and trainee are operating the aircraft, each may be considered a crewmember and neither meets the plain meaning of the term "passenger." Therefore, AOPA urged the FAA to retain the referenced legal interpretations,[61] conform the regulatory framework to reflect current policy and industry practice, and adopt a single regulation clarifying that an authorized flight instructor providing instruction to a trainee is not considered a passenger to the trainee, and vice versa.[62]

2. FAA Response

The FAA agrees with AOPA's comment that the regulations could better delineate the relationship between students and instructors. As stated in the NPRM, longstanding FAA legal interpretations have clarified that students and instructors are not considered passengers to one another. While the FAA ceded there was no regulatory

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[61] AOPA noted the lack of upkeep of the FAA's legal interpretation database, stating that these legal interpretations were withdrawn as of July 23, 2023, but at the time of their comment submission on September 18, 2023, still existed on the legal interpretation database. AOPA stated that, in general, the interpretation database is difficult to use and search terms do not generate accurate responses. AOPA strongly recommended that the FAA take steps to more effectively monitor and control its legal interpretation database so that it remains an accurate resource. The FAA continuously works to keep the legal interpretation database up to date and notes that members of the public can also refer to the Dynamic Regulatory System to review current FAA legal interpretations at drs.faa.gov.

[62] Specifically, AOPA cited the Kortokrax, Olshock, and Schaffner legal interpretations, which were withdrawn on July 23, 2023. 88 FR 41194, 41199. AOPA described a primary concern with the interim period between the withdrawal of the legal interpretations and final rule implementation. Specifically, AOPA posited that to withdraw these interpretations without first ensuring a clear framework is in place, whether it be regulatory or policy, poses a significant aviation safety concern because pilots and flight instructors who do not meet the recent flight experience requirements of § 61.57(a) and (b) will struggle to find a safe solution. The FAA acknowledges AOPA's concern, which is cured by virtue of this final rule.

basis upon which to make this assertion, the FAA finds this rulemaking to be the optimal opportunity to explicitly define "passenger" through a regulatory definition. As such, for the purposes of part 61, the FAA does not consider crewmembers, FAA personnel, manufacturer personnel required for type certification, or persons engaged in flight training, flightcrew member checking, or flightcrew member testing to be passengers. These groups are not considered passengers because they are onboard the aircraft for specific purposes, generally to fulfill regulatory obligations, and possess knowledge of the risks associated with those purposes (e.g., flight test engineers) or some sort of certification (e.g., an airman certificate). Conversely, persons on board an aircraft to receive a ride (whether transported from place to place or for other purposes like sightseeing, air tours, or persons carried to conduct aerial photography) would be considered passengers.

Notably, the FAA considered implementing AOPA's recommendation to adopt a single regulation explaining that an authorized flight instructor providing instruction and a trainee are not considered passengers to one another. However, the FAA found that a single regulation that narrowly defines the relationship between students and instructors would not address the carriage of other persons, such as crewmembers, FAA personnel, or manufacturer personnel required for type certification when the pilot is operating for compensation. Therefore, adopting AOPA's recommendation would not provide a sufficiently broad regulatory solution to clarify the term "passenger." The term "passenger" is frequently used in varying contexts throughout part 61, and the FAA finds that one definition of the term applicable to all of part 61 provides the requisite clarity to prevent multiple interpretations of the term.

Therefore, this final rule adopts a new definition in § 61.1(b) to define "passenger" as any person on board an aircraft other than a crewmember, FAA personnel, manufacturer personnel required for type certification, or a person providing or receiving

flight training, flightcrew member checking, or flightcrew member testing as authorized by part 61.[63] This new definition applies to the term "passenger" as it is used in part 61.[64]

To effectuate this change, the FAA evaluated all instances of the use of the term "passenger" in part 61 to ensure accuracy and consistency (i.e., to ensure that the new definition of passenger would not create an unintended consequence). While this evaluation identified other parts of the CFR that reference the definitions in § 61.1, only § 61.57 requires a conforming amendment. Because the FAA is defining "passenger" to exclude a flight instructor and trainee (in other words, memorializing that a trainee will not be a passenger to the flight instructor and vice versa), the use of the word "passenger" in current § 61.57(a)(1) and (b)(1) could be applied more broadly to create a scenario where a flight instructor who does not have the required recent flight experience could carry a trainee who is not yet capable to act as PIC. Specifically, § 61.57(a)(1) sets forth that, except as provided in § 61.57(e), no person may act as PIC of an aircraft carrying passengers or of an aircraft certificated for more than one pilot flight crewmember unless that person has made at least three takeoffs and three landings within the preceding 90 days characterized by certain conditions.[65] Because the new definition of "passenger" in § 61.1 includes (in pertinent part to this issue) any person on board an aircraft other than a person receiving or providing flight training, checking, or testing, under current application of the new definition with no revision to § 61.57(a)(1), a flight instructor could act as PIC of an aircraft without meeting the PIC recent flight experience requirements of § 61.57(a) because the trainee would not be a passenger. Similar recent flight experience is promulgated in § 61.57(b), requiring certain night takeoff and landing experience before a person may act as PIC of an aircraft carrying passengers during the

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[63] *Flightcrew member* is defined in 14 CFR 1.1 as a pilot, flight engineer, or flight navigator assigned to duty in an aircraft during flight time. Minimum flightcrew requirements are established at the time of type certification in the Type Certificate Data Sheet, operational regulation (e.g., part 121 or 135), or as otherwise prescribed by the certificating authority of the country of registry.

[64] 14 CFR 61.1(b).

[65] See § 61.57(a)(1)(i) and (ii).

period beginning 1 hour after sunset and ending 1 hour before sunrise, subject to certain conditions and exceptions,[66] which would result in the same safety concern. Although this final rule is enabling a situation where a flight instructor may be on board an aircraft with another pilot, neither of whom has met the recent flight experience requirements, the risk is mitigated by the fact that both persons are otherwise qualified to operate the aircraft. If the same flight instructor were to act as PIC of an aircraft carrying a flight student who is not an otherwise qualified pilot, the risk is increased because, in the event of an emergency, only one person is capable of operating the aircraft, rather than two, and the sole person capable of operating does not have the benefit of recent flight experience (in other words, certain proficiencies may have degraded over time due to disuse).

Additionally, this change necessitates an addition to the list of exceptions set forth in § 61.57(e) to include an exception for an examiner and an applicant during the conduct of a practical test to preserve the regulatory authority granted by § 61.47(c). Section 61.47(c) enables a scenario in which a practical test could be conducted when neither the examiner nor the person receiving the practical test has met the recent flight experience requirements of § 61.57(a) or (b) because it explicitly states that those persons are not subject to the requirements or limitations for the carriage of passengers that are specified in 14 CFR chapter I. Because § 61.57(a) and (b), as currently written, apply to "passenger," § 61.47(c) functions to except the examiner and the person receiving the practical test from the requirements set forth in § 61.57(a) and (b). Although uncommon, there could be a scenario where neither an examiner nor the person receiving the practical test has met the recent flight experience requirements of § 61.57(a) or (b); however, the test can still be safely conducted because there are other proficiency requirements for examiners and applicants. For example, examiners must meet PIC experience

[66] See § 61.57(b)(1)(i) and (ii) and (e).

requirements every 12 months to maintain eligibility to conduct practical tests.[67] Likewise, applicants for a practical test must meet certain prerequisite aeronautical experience requirements.[68] With this final rule, the FAA maintains the position that a designee and an applicant for a practical test can conduct the test without meeting the requirements of § 61.57(a) and (b). To facilitate this position in light of the change from "passengers" to "persons" in § 61.57(a) and (b), the exception adopted in this final rule as new § 61.57(e)(6) specifies that paragraphs (a) and (b) do not apply to the examiner or the applicant during the conduct of a practical test required by part 61. The FAA emphasizes that this new provision simply maintains the status quo for examiners and applicants during practical tests.

Therefore, this final rule modifies § 61.57(a)(1) and (b)(1) to change the word "passengers" to "persons" to limit those who may be on board to the specific exceptions identified in § 61.57(e), which includes a new exception for instructors and trainees in certain circumstances.

G. Experimental Light-Sport Aircraft (§ 91.319(e))

Section 91.319(e) contains specific limitations on the use of certain experimental aircraft certificated under § 21.191(i)(1). The NPRM proposed to modify § 91.319(e)(2) to remove the date restriction on flight training in experimental light-sport aircraft (ELSA) and direct stakeholders to the flight training, checking, and testing in proposed § 91.326, thus enabling flight training in certain ELSA. In addition, the NPRM proposed to modify § 91.319(f)(2) to allow a person receiving flight training to lease certain ELSA for the purpose of accomplishing solo flight and a practical test in accordance with a

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[67] *See* FAA Order 8000.95C, *Designee Management Policy*, Chapter 5, Table 3-9.

[68] *See* §§ 61.99(a)(1)(ii), 61.109(a)(4), and 61.129(a)(3)(v) which require an applicant for a recreational, private, and commercial certificate, respectively, to obtain three hours of aeronautical experience with an authorized instructor in preparation for the practical test within the preceding 2 calendar months from the month of the test.

training program included in the deviation authority authorized in accordance with proposed § 91.326(b). The proposed revisions were intended to increase the availability of light-sport aircraft for training and aid individuals who wish to train in the type of aircraft they operate.

1. Summary of the Comments

Two commenters, Aero Sports Connection Inc. (ASC) and EAA, supported changes to § 91.319(e), but with conditions. The FAA received no opposing comments related to the proposed changes to § 91.319(e).

EAA supported the proposed rule language in § 91.319(e)(2) to remove the sunset date for experimental aircraft, citing the amendment as an essential step toward reversing the net effect of eliminating training opportunities due to the low volume of S-LSAs and exclusion of E-LSAs. However, EAA noted the proposed rule change does not modify the language in § 91.319(e) that specifies eligibility is limited to ELSA certificated under § 21.191(i)(1). EAA explained that, while this proposed change increases the pool of available light aircraft for training, it excludes flight training, checking, and testing in ELSA certificated under § 21.191(i)(2) and (3) (i.e., kit-built ELSA and ELSA previously issued a special airworthiness certificate in the light-sport category (SLSA) under § 21.190, respectively). EAA asserted that since both of these certification pathways begin with conformity to ASTM International standards,[69] while the "grandfathered" aircraft do not, EAA cannot contemplate a safety case for excluding these aircraft from training or glider towing. EAA suggested removal of introductory text in § 91.319(e) functioning to limit the exception to only those aircraft issued an experimental certificate under § 21.191(i)(1).[70]

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[69] In this context, "ASTM" refers to the American Society for Testing and Materials.

[70] EAA also referenced a simultaneous FAA rulemaking, Modernization of Special Airworthiness Certification, 88 FR 47650 (Jul. 24, 2023) (Docket No. FAA-2023-1377) and expressed support for a future amendment to § 91.319(e)(2) to accommodate kit-built E-LSAs if MOSAIC's proposal to move certification language on kit-built E-LSA aircraft from § 21.191(i)(2) to § 21.191(j) finalizes.

ASC proposed to add a privilege for sport pilots to offer "transition-for-hire" training in a subgroup of light sport aircraft ASC describes as high drag/low mass aircraft with a stall speed less than 39 mph. ASC labeled this subgroup as "Lighter Sport Aircraft, or LrSA." ASC further clarified that the proposed training would be limited to take-off, minimum controllable airspeed, and landing, and that this training would not be applicable to the student's next flight certificate. ASC asserted that the need for this type of training was generated because of the 2004 final rule related to light sport aircraft.[71] ASC described a dearth of available LrSA and instructors because of the new rule, which forced LrSA previously authorized for flight training by exemption to register as ELSA. The newly-registered ELSA aircraft were prohibited from flight training operations after 2010 in accordance with § 91.319(e)(2). To resolve the perceived dearth of available LrSA aircraft and instructors, ASC proposed to modify sport pilot privileges to enable the previously described transition-for-hire training without the requirement to hold a flight instructor certificate or Sport Pilot flight instructor certificate.

2. FAA Response

Although the FAA will enable compensated flight training in certain aircraft holding special airworthiness certificates with this final rule, including experimental light sport aircraft, the FAA did not propose changes to sport pilot regulations or aircraft described by ASC as "LrSA" in the NPRM. For this reason, the changes recommended in the comment are outside the scope of this rulemaking.

While the FAA proposed to revise certain paragraphs within § 91.319, it did not propose to revise the introductory language of § 91.319(e), which states that no person may operate an aircraft issued an experimental certificate under § 21.191(i) for compensation or hire, except a person may operate an aircraft issued an experimental

[71] Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft, 69 FR 44772 (July 27, 2004).

certificate only under § 21.191(i)(1) in certain scenarios (i.e., the exceptions set forth in standing paragraph (e)(1) and proposed paragraph (e)(2)). As noted by EAA's comment, the FAA did not propose to include those aircraft certificated under § 21.191(i)(2) (light-sport aircraft that has been assembled from an aircraft kit and is in accordance with manufacturer's assembly instructions that meet an applicable consensus standard) or § 21.191(i)(3) (has previously been issued a special airworthiness certificate in the light-sport category under § 21.190). Originally, the removal of the date restriction in § 91.319(e)(2) was part of another rule.[72] When that rule was absorbed into this current rule, the FAA attempted to remain consistent with the original rule, which did not include changes to the introductory language of § 91.319(e).

However, the FAA agrees with EAA's suggestion to broaden the scope of aircraft available for flight training, flightcrew member checking, or flightcrew member testing (i.e., operations under § 91.326) and, therefore, this final rule revises § 91.319(e)(2) to be inclusive of aircraft certificated under § 21.191(i) as a whole. ELSA certificated under § 21.191(i)(2) and (3) either meet an applicable consensus standard or met such a standard previously, indicating the presence of standards for aircraft design and performance, required equipment, manufacturer quality assurance systems, production acceptance test procedures, operating instructions, maintenance and inspection procedures, identification and recording of major repairs and major alterations, and continued airworthiness.[73] This consensus standard ascertains a comprehensive quality of the aircraft such that the FAA finds no reason it should be excluded from these operations.

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[72] Removal of the Date Restriction for Flight Training in Experimental Light Sport Aircraft, NPRM, 83 FR 53590 (Oct. 24, 2018). Removal of the Date Restriction for Flight Training in Experimental Light Sport Aircraft; Withdrawal, 88 FR 41045 (Jun. 23, 2023).

[73] *See* 14 CFR 1.1 definition of "consensus standard."

The FAA notes that the proposal did not contain any revisions to the various provisions within part 91 related to towing operations.[74] Utilizing ELSA certificated under § 21.191(i)(2) or (3) for compensated glider towing is outside the scope of this rule, particularly at the final rule stage where the FAA has neither had an opportunity to analyze towing regulations, aircraft, and safety considerations, nor solicit comments on changes to such operations.

Accordingly, this final rule modifies § 91.319(e) to include aircraft certificated under § 21.191, as a whole, for use in flight training and other operations set forth by the new § 91.326. Specifically, this final rule revises § 91.319(e) to state that no person may operate a light-sport aircraft that is issued an experimental certificate under § 21.191 for compensation or hire with two exceptions. Under revised § 91.319(e)(1), a person will be able to operate an aircraft issued an experimental certificate under § 21.191(i)(1) to tow a glider that is a light-sport aircraft or unpowered ultralight vehicle in accordance with § 91.309 (i.e., the status quo, as these revisions are largely editorial in nature only). Additionally, revised § 91.319(e)(2) will permit a person to operate an aircraft issued an experimental certificate under § 21.191 to conduct operations authorized under § 91.326. The FAA did not receive any comments related to the proposed change to § 91.319(f), (f)(1), and (f)(2) and adopts those changes as proposed.

H. Exception to Operating Certain Aircraft for the Purposes of Flight Training, Flightcrew Member Checking, or Flightcrew Member Testing (§ 91.326)

Currently, §§ 91.315, 91.319, and 91.325 prohibit operating limited category, experimental, and primary category aircraft carrying persons or property for compensation or hire; these regulations generally prohibit flight training, checking, and

[74] Examples of towing provisions in part 91 include § 91.309, which provides requirements for the towing of a glider or unpowered ultralight vehicle, and § 91.311, which provides requirements for towing vehicles not covered under § 91.309.

testing when compensation is provided. As discussed in the NPRM,[75] aircraft owners seeking to receive flight training in their own personal-use experimental aircraft, and flight instructors providing that training for compensation, applied for a LODA through a streamlined process. However, section 5604 of the 2023 NDAA contains a provision that removes the LODA requirement for flight training, testing, and checking in experimental aircraft under certain conditions while prohibiting an authorized instructor from providing both the training and the aircraft. [76]

To effectuate the provisions of the NDAA into the regulations, in the NPRM, the FAA proposed to add § 91.326 to delineate the requirements related to flight training, checking, and testing in certain aircraft holding limited category, primary category, and experimental airworthiness certificates. The proposed language in § 91.326(a) would specify activities not requiring a LODA (i.e., codification of the legislation): those operations for the purpose of flight training, checking, or testing provided the authorized instructor is not providing both the training and the aircraft; no person advertises or broadly offers the aircraft as available for flight training, checking, or testing; and no person receives compensation for the use of the aircraft for a specific flight during which flight training, checking, or testing was received, other than expenses for owning, operating, and maintaining the aircraft. To note, the proposal included limited category and primary category aircraft, in addition to experimental aircraft, because the safety justification for enabling these activities equally applied. Proposed § 91.326(b) would identify operations requiring a LODA (flight training, checking, or testing in a limited category or experimental aircraft except as provided in proposed § 91.326(a) and (c)), and prescribe the application framework and administrative process. Proposed §

[75] 88 FR 41194 at 41208.
[76] Pub. L. 117-263.

91.326(c) would function to sunset all LODAs issued under current § 91.319(h) (which this final rule reserves, as operations requiring a LODA will move to new § 91.326).

This section of the preamble describes comments received on new § 91.326, discusses the revisions as an outgrowth of public comments, and explains the modified section reorganization adopted in this final rule.

1. Change to Title of § 91.326

First, to note, § 91.326 was previously proposed to be titled "Exception to Operating Certain Aircraft for Compensation or Hire" in the NPRM. This final rule revises the section heading for § 91.326 to read "Exception to operating certain aircraft for the purposes of flight training, flightcrew member checking, or flightcrew member testing." This final rule revises the section heading for two reasons. First, as subsequently discussed, § 91.326 was reorganized, and a provision is added herein to account for operations that are uncompensated. Second, the section heading is modified to clarify that the rule is applicable only to flight training, checking, and testing for flightcrew members to prevent conflation of flightcrew member testing and flight testing of an experimental aircraft (e.g., testing new equipment or aircraft designs). Since flight testing is a commonly used term in experimental aircraft for the latter purpose, the adopted title intends to clarify application of the new section.

2. General Provisions of § 91.326(a)

In light of the subsequently explained changes in section 1.B. of this preamble, this final rule modifies the organization of new § 91.326 from that which was proposed. While proposed § 91.326(a) previously set forth the circumstances under which an authorized instructor, registered owner, lessor, or lessee would be permitted to operate an aircraft for the purpose of flight training, checking, or testing and, in the case of an experimental aircraft, for a purpose other than that for which the certificate was issued, this final rule relocates that proposed paragraph (a) and the proposed conditions of

paragraph (a)(1) through (3) to § 91.326(c). Instead, paragraph (a), as adopted in this final rule, functions to specify that notwithstanding the prohibitions in §§ 91.315, 91.319, and 91.325, a person may conduct flight training, checking, or testing in a limited category aircraft, experimental aircraft, or primary category aircraft under the provisions of § 91.326 to provide a generalized applicability paragraph within the section.

3. Operations Requiring a LODA in 91.326(b)

For those operations that cannot meet the conditions for operating without a LODA, the FAA proposed § 91.326(b) to codify a consistent framework for requesting a LODA to conduct flight training, checking, and testing in limited category and experimental aircraft similar to the allowance currently reflected in § 91.319(h) for experimental aircraft. Specifically, § 91.326(b) proposed that any person who wants to conduct flight training, checking, or testing in limited category and experimental aircraft outside the restrictions and limitations of proposed § 91.326(a) (changed to § 91.326(c) in this final rule) must apply for deviation authority.

Particularly, proposed § 91.326(b)(1) functioned to clarify that operators would be granted relief from § 91.315 or § 91.319(a) through a LODA. In addition, the FAA proposed to add § 91.326(b)(2) to enable the FAA to cancel or amend a LODA if it determines that the deviation holder has failed to comply with the conditions and limitations or if at any time the Administrator determines that the deviation is no longer necessary or in the interest of safety. Section 91.326(b)(3) proposed a timeline for operators to submit LODA applications, the form and manner requirements for submission, and the information that the applicant must provide. Section 91.326(b)(4) would permit the Administrator to continue prescribing conditions and limitations in LODAs for experimental aircraft and extended that allowance to LODAs issued for training, testing, and checking in limited category aircraft when necessary for safety. To note, the FAA published and sought comment on a draft AC, which was placed in the

docket upon NPRM publication, that provided a full list of conditions and limitations in Table 4, "Additional Limitations." Proposed § 91.326(b)(5) would limit the persons permitted to be on board an aircraft during operations under a LODA: besides the instructor, designated examiner, and the person receiving the training, checking, or testing, only persons deemed essential to the safe operation of the aircraft would be permitted to be carried on board the aircraft. Finally, proposed § 91.326(b)(6) would limit the types of training, testing, and checking that may be authorized under the deviation authority.

The following sections describe commenters' discrete issues on paragraph (b) and resulting revisions. Except as described in the following sections, § 91.326(b) is adopted as proposed.

i. Specificity

The FAA received feedback regarding the specificity of § 91.326(b). EAA expressed concern that § 91.326(b) was written with unnecessary specificity and may lead to future inflexibility. EAA recommended that the FAA reduce the text in § 91.326(b) to the minimum necessary to establish a safe and efficient LODA framework. Further, EAA recommended that the FAA administer more specific requirements on LODAs through policy by deleting the paragraphs proposed under § 91.326(b)(3) (enumerating the requirements to be included in the LODA request) and simply requiring the request for deviation to contain a complete description of the proposed operation which establishes a level of safety equivalent to that provided under the regulations for the deviation requested in a manner acceptable to the Administrator.

While the FAA agrees that § 91.326(b) as proposed is specific as to what the LODA request must include, the FAA finds it is not unnecessarily so. Under the Administrative Procedure Act, agencies may promulgate rules that describe the agency's

procedures using notice-and-comment rulemaking.[77] The FAA drafted § 91.326(b) to adequately explain its proposed procedures to apply for and receive deviation authority under the regulation. Because the requirements in § 91.326(b) are generally applicable to all LODA applicants and holders, it is appropriate that they should be memorialized in regulation instead of in guidance material or through policy.

Furthermore, notice-and-comment rulemaking provides the public the opportunity to participate in rulemaking through submission of written data, views, or arguments.[78] If the FAA chose to issue the procedures under which deviation authority is authorized as policy or guidance, the public may not have the same opportunity to provide comments on them, nor would the public be adequately informed of the information they are required to provide. Additionally, shortening the description of procedures described in § 91.326(b) could lead to additional confusion due to a lessened degree of specificity on the process in the regulation.

ii. FAA Ability to Deny an Application for a LODA

Proposed § 91.326(b)(2) set forth that the FAA could cancel or amend a LODA upon a determination that the deviation holder failed to comply with the conditions and limitations or if at any time the Administrator determines that the deviation is no longer necessary or in the interest of safety. Historically, the FAA has denied an application for a LODA if it determines the proposed deviation would not be in the interest of safety or is unnecessary. For example, if an applicant were to request a LODA to provide § 61.56 flight reviews to trainees who do not have a specific need to receive a flight review in an aircraft with a special airworthiness certificate, the FAA would deny the application because there are a sufficient number of aircraft with standard airworthiness certificates in which a person could receive a flight review. Similarly, the FAA finds it necessary to

[77] Administrative Procedure Act, 5 U.S.C. 551 et seq.
[78] Administrative Procedure Act, 5 U.S.C. 553.

memorialize this discretion when considering whether to grant or deny a LODA under § 91.326. Therefore, the FAA is adding language to § 91.326(b)(2) to parallel the language in proposed paragraph (b)(2) to memorialize its discretion to deny an application for a LODA based on safety or necessity determinations.

iii. Removal of Requirement to Submit Previous Exemptions with LODA Application

Additionally, proposed § 91.326(b)(3)(vi) would have required an applicant to submit copies to the FAA of each exemption issued to that applicant as part of the LODA request. This final rule removes this requirement from the list of information required to be submitted with a request for a LODA. The FAA reviewed this requirement during the pendency of this rulemaking and finds it is no longer necessary to require this submission by the applicant, as exemptions are maintained by the FAA and can be researched and reviewed utilizing internal databases. In turn, this removal redesignates each following paragraph (i.e., proposed § 91.326(b)(3)(vii) requiring a detailed training program is adopted as paragraph (b)(3)(vi), proposed § 91.326(b)(3)(viii) requiring certain descriptions of the applicant's process is adopted as paragraph (b)(3)(vii), etc.).

iv. Specific Need for Certain Training (Proposed as § 91.326(b)(3)(viii))

The FAA proposed to add § 91.326(b)(3)(viii) to require a LODA applicant to submit a description of the applicant's process to determine whether a trainee has a specific need for formation or aerobatic training, or training leading to the issuance of an endorsement, if that LODA applicant seeks to offer such training. To note, the submission would be required to describe how the LODA applicant would determine whether a trainee has a "specific need" to receive such training. The NPRM identified some examples of trainees with a "specific need," including aircraft builders and owners. The aircraft proposed to be used for training requiring a "specific need" under a LODA must have handling qualities and flight characteristics similar to those of the aircraft

being built or flown by the trainee. The FAA noted that trainees should have regular access to substantially similar aircraft as those used for training requiring a "specific need," and would benefit from the additional training under a LODA, as training can expand pilot skills that are transferrable to the aircraft they will regularly fly. Persons without a specific need can receive aerobatic training, formation training, or training leading to the issuance of an endorsement in an aircraft holding a standard airworthiness certificate.

EAA stated that they appreciated the FAA's proposed flexibility in expanding the list of eligible LODA training to include endorsements and formation and aerobatic training; however, EAA opposed the proposal of § 91.326(b)(3)(viii) requiring a trainee to have a specific need to receive certain types of flight training under a LODA. First, EAA asserted that certificated pilots are not members of the unknowing public, and they are qualified to make decisions on managed risks, resulting in many safety-related reasons why they may choose to pursue training in these types of aircraft, including, for example, safety benefits in training in unique and challenging aircraft. EAA also described other types of training available under a LODA without the demonstration of a "specific need," including type-specific transition and turbojet unusual attitude and upset recovery training. EAA stated that a more diverse training fleet (including experimental and limited category aircraft) will offset any risk of training in those aircraft given the appropriate mitigations contained in the rule and policy, although its comment provided no data to support that assertion. Finally, EAA pointed out that various types of training may align with a pilot's interests and may be tangential to other flight training. In sum, EAA, first, renewed its recommendation to remove the entirety of the paragraphs proposed under § 91.326(b)(3) or, more narrowly, recommended removal of proposed § 91.326(b)(3)(viii).

Historically, the FAA has limited the types of flight training available under a LODA.[79] Consistent with the historical rationale for limiting operations authorized under a LODA, the primary reason such operations remain limited is because these kinds of flight training are readily available in aircraft holding standard airworthiness certificates. The FAA recognizes that there is value in receiving flight training in an aircraft similar to that which the trainee will regularly operate. Likewise, there is value in receiving certain specialized training (such as aerobatics and formation) when the trainee plans to conduct that type of flying after training in an aircraft with substantially similar handling characteristics. For these reasons, the FAA proposed to expand the types of training authorized under a LODA to include aerobatics and endorsements, but only for persons with a specific need, as previously described, to receive that training in an aircraft holding a special airworthiness certificate. However, the FAA declines to permit these operations as broadly as these operations may be conducted in a standard category aircraft.

The use of aircraft holding special airworthiness certificates for unfettered training undermines the foundational safety considerations for rigorous certification standards required to achieve a standard airworthiness certificate. Standard category aircraft are designed and tested for safety and reliability in accordance with FAA certification standards, whereas aircraft holding special airworthiness certificates are not. Broadly expanding operations authorized under a LODA could encourage flight schools and other part 61 flight training providers to replace their proven standard category

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[79] See FAA Order 8900.1, Vol. 3, Ch. 11, Sec. 1, *Use of Aircraft Issued Experimental Certificates in Flight Training for Compensation or Hire*, dated 5/24/2011, para. 3-293(B)(2) which states, "The FAA will issue training deviations to permit the conduct of training that can only be accomplished in aircraft with experimental certificates. LODAs should not be issued to permit flight training in experimental aircraft leading toward the issuance of a pilot certificate, rating, or operating privilege." Likewise, the same paragraph states, "LODAs also should not be issued to permit flight training such as aerobatics or training leading to the issuance of an endorsement (e.g., tailwheel or pressurized aircraft, or a complex or high performance airplane). This training is available in aircraft holding Standard Airworthiness Certificates and it is therefore not acceptable to issue a LODA for the purpose of conducting such training."

aircraft with less expensive experimental versions, which could have a detrimental effect on safety (e.g., by increasing the accident rate during training) due to the fact that experimental aircraft do not meet a certification standard and have not demonstrated reliability to the FAA.

Although EAA reasoned that certificated pilots who undertake flight training are not members of the unknowing public, and that other types of training are available under a LODA without a specific need, the FAA does not agree that all types of training should be made available under a LODA. The FAA is making a distinction and limiting eligible types of training under a LODA to training that is not readily available in aircraft holding standard airworthiness certificates (for example, training toward experimental authorizations and limited category type ratings, and jet unusual upset and recovery training), or certain training which may be available in aircraft with standard category airworthiness certificates (for example, aerobatics and training leading to endorsements), but which the trainee has a specific need to receive under a LODA. The primary reason for limiting flight training as described is to minimize exposure in aircraft that are inherently less safe, even when trainees may be in a position to accept risk. Pilots are not trained and tested on the differences between experimental aircraft and aircraft with standard airworthiness certificates as part of any pilot certification (e.g., private, commercial, etc.): therefore, these persons may not have the necessary information or knowledge to accept all risks associated with these aircraft just because they may be engaging in training, checking, or testing. Likewise, persons undergoing flight training span a large spectrum of knowledge, from a student on their first flight to a person in the final stages of flight training prior to taking a check ride. For these reasons, the FAA will continue to limit the types of training offered under a LODA and will finalize the regulation as proposed.

Therefore, in the final rule, the FAA maintains the requirements in § 91.326(b)(3)(viii) as proposed. The FAA notes that, because of the removal of proposed § 91.326(b)(3)(vi), as previously discussed, this provision is redesignated as § 91.326(b)(3)(vii).

v. LODA AC Limitations Moved to Regulation

As previously noted, the FAA simultaneously published the LODA Advisory Circular (AC) with the NPRM in June 2023. This AC included Table 4, "Additional Limitations," which the FAA explained contained the full list of conditions and limitations imposed with a LODA. These conditions and limitations add risk mitigations for specific operations. The FAA sought comment on the AC in tandem with the NPRM, specifically requesting feedback on Table 4 in the AC.[80] During the pendency of the rulemaking, the FAA examined the overarching applicability of each of the operating limitations as set forth on current LODAs and as set forth in the AC. While these operating limitations were originally in Table 4 of the AC, the FAA has determined these must be included in regulation rather than in guidance because they are rules of general applicability to all LODA holders. This means that the additional limitations would uniformly be applied to all LODA holders unless an applicant requests a modification (in which case, the FAA will have the opportunity to evaluate whether the request is in the interest of safety). Additionally, while the FAA cedes these operating limitations were not set forth in the proposed regulations themselves, the FAA finds that the public had sufficient notice via publication in the docket and an opportunity to comment on Table 4's operating limitations during the comment period. Notably, the limitations and table have been removed from the final AC and inserted into regulation through this Final Rule.

In sum, the following limitations have been adopted in § 91.326(b)(4):

[80] 88 FR 41194 at 41212.

AC Table 4 Citation	Final Rule Regulatory Citation	Operating Limitation	Change from AC to Final Rule[81]
No. 1	§ 91.326(b)(4)(i)	The operator must use the aircraft-specific flight and ground training program for the training authorized by the LODA. Demonstration flights, discovery flights, experience flights, and other flights not related to the training program are not authorized.	No change.
No. 2	Not applicable.	Persons conducting instruction under this LODA (§ 91.326(5)): • Must be qualified to act as PIC in the aircraft being flown. • Must hold a Certificated Flight Instructor (CFI) certificate or be otherwise authorized by the Administrator to provide flight training in the specific aircraft.	This operating limitation was not adopted into § 91.326(b)(4) because the requirements for a flight instructor to be qualified to act as PIC in the aircraft and hold a flight instructor certificate to conduct flight training were already required by the § 61.1 definition of "authorized instructor" and by §§ 61.193 and 61.413, rendering this operating limitation duplicative.
No. 3	§ 91.326(b)(4)(ii)	As appropriate to the aircraft being flown, all trainees must hold: a category and class rating; a type rating, Authorized Experimental Aircraft authorization, or temporary Letter of Authorization; and endorsements listed in § 61.31,	Addition of the language low mass, high drag aircraft with an empty weight less than 650 pounds in item 1 because the omission from

		as appropriate, with the following exceptions: 1. Persons receiving gyroplane training or training leading to the initial issuance of a sport pilot certificate or flight instructor certificate with a sport pilot rating in a low mass, high drag aircraft with an empty weight less than 650 pounds and a $V_H \leq 87$ Knots Calibrated Airspeed (KCAS) are not required to hold category or class ratings. For training leading to an endorsement for additional sport pilot privileges, the pilot receiving the training must hold at least a sport pilot certificate with appropriate category and class ratings and endorsements issued under § 61.31, as appropriate. 2. Persons with a specific need to receive training toward the issuance of an endorsement are not required to hold the § 61.31 endorsement sought. Any endorsements being provided must be authorized in the LODA. 3. Persons receiving jet unusual attitude and upset recovery training, limited category type rating training, or authorized experimental aircraft authorization training, if required for the type of aircraft being flown, are not required to hold the applicable type rating, authorized experimental authorization rating, or a temporary Letter of	the AC was an oversight, as noted by EAA; minor editorial revisions.

		Authorization, prior to the commencement of training. 4. For ultralight-style training, the person receiving training is not required to meet category and class ratings or § 61.31 endorsement requirements. However, if the flight training includes a solo flight segment, this does not relieve the person receiving training from the requirements of part 61, subpart C. This training is limited to a low mass, high drag aircraft with an empty weight less than 650 pounds and a maximum speed in level flight with maximum continuous power less than 87 KCAS.	
No. 4.	§ 91.326(b)(4)(iii)	If the aircraft is equipped with ejection seats and systems, such systems must be rigged, maintained, and inspected in accordance with the manufacturer's recommendations. Before providing training in aircraft equipped with operable ejection systems, whether armed or not armed, all aircraft occupants must complete a course of ejection seat training.	No change.
No. 5	§ 91.326(b)(4)(iv)	When conducting spin and upset training, the operator must maintain a minimum recovery altitude of 6,000 feet above ground level unless the Administrator authorizes a lower altitude.	Addition of "unless the Administrator authorizes a lower altitude" to provide operational flexibility when warranted.
No. 6	§ 91.326(b)(4)(v)	A copy of the LODA must be carried on board the aircraft during flight training conducted under the LODA.	No change.
No. 7	§ 91.326(b)(4)(vi)	The LODA holder must keep a record of the training given for a period of 36 calendar months	Minor editorial revisions.

		from the completion date of the training. The authorized instructor must sign the trainee's flight training records certifying that the flight training or ground training was given. The training record must include the following: 1. The name and certificate number (if applicable) of the trainee; 2. The name, signature, and certificate number of the instructor; 3. The date trained; 4. The training received; 5. The trainee's specific need for training, if applicable.	
No. 8	§ 91.326(b)(4)(vii)	Notwithstanding § 43.1(b) or § 91.409(c)(1), all aircraft must: 1. Except for turbine powered or large aircraft, within the preceding 100 hours of time in service, have received an annual, 100-hour, or condition inspection equivalent to the scope and detail of part 43, appendix D, and been approved for return to service in accordance with part 43. The 100-hour limitation may be exceeded by not more than 10 hours while enroute to reach a place where the inspection can be done. The excess time used to reach a place where the inspection can be done must be included in computing the next 100 hours of time in service; or 2. Except for turbine powered or large aircraft, be inspected in accordance with an FAA-	Addition of: reference to § 43.1(b), exception to turbine powered or large aircraft, and appendix D to part 43 (to clarify the scope and detail necessary of the long-standing requirement for aircraft operating under a LODA to have an annual, 100-hour, or condition inspection every 100 hours), and flexibility to allow an exceedance of this limit for certain purposes.

		approved inspection program that includes provisions for ensuring continued airworthiness and recording the current status on life-limited parts and in accordance with the manufacturer's instructions. 3. For turbine-powered or large aircraft, be inspected in accordance with an FAA-approved inspection program that meets the scope and detail of the requirements of § 91.409(e), (f)(4), and (g) for ensuring continued airworthiness and recording time remaining on life-limited parts in accordance with the manufacturer's instructions.	
No. 9	§ 91.326(b)(4)(viii)	Notwithstanding any exception due to the experimental airworthiness certification of the aircraft, LODA holders with experimental aircraft must comply with FAA Airworthiness Directives applicable to any corresponding make or model aircraft holding a different type of airworthiness certificate or applicable to any article installed on the aircraft. The LODA holder must evaluate the aircraft and its articles to determine if compliance with the FAA Airworthiness Directive is necessary for the continued safe operation of the aircraft. LODA holders must keep a maintenance record entry of those FAA Airworthiness Directives evaluated. For those FAA Airworthiness Directives for which the LODA holder determined compliance was necessary for the continued safe operation of the aircraft, the record must also include the method of compliance, and if	Notwithstanding language added to clarify the requirement for compliance with Airworthiness Directives.

		the FAA Airworthiness Directive requires recurring action, the time and date when the next action is required.	
No. 10	Not applicable.	The responsible person accepts responsibility for complying with the requirements of the conditions and limitations of this LODA by signing this document. If the responsible person relinquishes responsibility, this LODA becomes invalid. The name, email address, and telephone number of the responsible person signing this LODA must be listed in the LODA (§ 91.326(b)(4)).	This operating limitation was not adopted in regulation because § 91.326(b)(3)(ii) requires identification of an individual with ultimate responsibility for operations under the LODA. This person will be listed on the LODA. Therefore, limitation No. 10 was repetitive.

Finally, in this final rule, the FAA adds the language "unless otherwise authorized by the Administrator" to the introductory paragraph of § 91.326(b)(4). While the provisions of § 91.326(b)(4) are generally applicable, the FAA recognizes there may be circumstances unique to the LODA operation sought that may warrant flexibility and could still be conducted safely. In general, when a person seeks to operate contrary to a regulation, they must petition for exemption under part 11, which requires that they must also have a public interest to support the petition. Because specific changes that a unique LODA applicant may request may not benefit the public as a whole (e.g., individualized circumstances), exemption criteria would not be met. This addition enables individualized assessment of the addition or removal of conditions and limitations to a

[81] To note, these changes do not add any major substantive requirements to the limitations as set forth in the proposed AC.

LODA, thereby increasing flexibility while still maintaining specificity of the conditions and limitations that will generally be applied to all applicants in the regulation.

vi. Persons Permitted on Board During Operations under a LODA

The NPRM proposed to add § 91.326(b)(5) to limit the persons permitted to be on board an aircraft during operations under a LODA to only the authorized instructor, designated examiner, person receiving flight training or being checked or tested, or persons essential for the safe operation of the aircraft. This is because, as previously described in this preamble, the airworthiness certification standards for aircraft that hold special airworthiness certificates do not rise to the level of demonstrated safety and reliability of those holding standard airworthiness certificates. Also, additional persons on board who are not directly related to flight training could cause unnecessary distractions during flight training, posing a risk to trainees. Therefore, the FAA proposed to limit persons on board to those authorized instructors, designated examiners, persons receiving flight training (or being checked or tested), and those persons "essential for the safe operation of the aircraft" to ensure those persons performing certain crucial functions are not excluded from facilitating a safe aircraft operation.[82] Outside of the personnel delineated in the proposed § 91.326(b)(5), the proposal did not contemplate the additional carriage of persons on board the aircraft even with the issuance of a LODA.

Champaign Aviation Museum (CAM) and EAA specifically opposed the proposal to add § 91.326(b)(5). CAM commented that the ability for an additional pilot to be included during a training flight is important, regardless of whether the operation is conducted under a LODA. CAM described four scenarios whereby an additional person who would otherwise be prohibited by § 91.326(b)(5) should be permitted to be on the

[82] See 88 FR 41194 at 41212 for comprehensive discussion on the FAA's analysis of who would be considered a person conducting functions "essential for the safe operation of the aircraft."

aircraft during operations under a LODA. The four scenarios set forth by CAM described the additional extra person(s):

- New SICs to see the checklist process and Crew Resource Management (CRM) from an instructor, watch a flight crew conduct training, and listen to crew coordination from a jumpseat;
- Observing procedures and operations by another pilot (with an instructor in the right seat) when two pilots are training for the same type rating;
- An instructor in the jumpseat to observe and provide feedback on CRM for a new pairing of captain and SIC who have not otherwise flown together; and
- Training in an aircraft to an airport with long runways for new volunteer pilots who have little experience in the corresponding braking mechanisms to reduce burden on landing just to switch training pilots (e.g., B-25 training).

CAM also expressed concern that § 91.326(b)(5) might be construed to prohibit additional persons onboard during non-LODA operations, as described in some of the referenced scenarios.

EAA and Warbirds of America (WOA) sought expanded flexibility for more than one person receiving training during the course of a given flight. Specifically, EAA and WOA stated that it is a common practice in larger warbird aircraft to carry multiple students on a given flight and rotate them through the appropriate pilot seat for flight training. EAA explained that this allows, for example, multiple students to train air work tasks at altitude with a single takeoff and landing, which would save fuel, resources, and time. EAA asserted that students not actively receiving flight instruction are still educated by the opportunity to observe other students, similar to some of CAM's provided examples. Likewise, EAA stated that the presence of those students is germane to the

purpose of the flight, and they are not receiving an inappropriate "ride." EAA proposed a regulatory text change in § 91.326(b)(5) indicating persons, in the plural, could be receiving flight training under the provision,[83] claiming a legal interpretation of § 61.129 supported this change.[84] EAA asserted that this legal interpretation further supports a precedent that persons not seated at a pilot station could be on board the aircraft for "instructional purposes."

Section 91.326(b)(5) will apply only to those operations conducted under a LODA and will not apply to other types of operations. Persons who may be carried during operations conducted outside the parameters of a LODA are limited by § 91.315 for limited category aircraft, § 91.319(a) for experimental aircraft, and any other applicable regulations (e.g., § 91.9(a)). In certain circumstances, carriage of an observer may be in violation of other regulations, regardless of whether the operation is conducted under a LODA (e.g., § 61.55(f)(3) and (h)(2)). For example, CAM referenced flight training in a North American B-25 while carrying a person observing the flight training, where the observer would not be sitting at a required crew station and, therefore, is not actively receiving flight training.[85] Notably, since a B-25 requires two pilots, a qualified second-in-command (SIC) is required in accordance with § 61.55.[86] To serve as a second-in-command, among other requirements, a person must meet certain familiarization

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[83] EAA's comment also noted the location in the draft AC where this change would need to be effectuated, if adopted in the final rule.

[84] Legal Interpretation to John Olshock (May 4, 2007). EAA summarizes the legal interpretation as making several references to the instructor having discretion over the number of persons onboard the aircraft and concludes with the statement "the instructor also may permit others on board for instructional purposes."

[85] *See* § 61.195, Flight instructor limitations and qualifications, and Legal Interpretation to Lawrence Williams (Aug. 27, 2018), which states, "Section 61.195(g)(2), in pertinent part, requires a flight instructor who provides flight training for a pilot certificate or rating issued under part 61, to provide flight training in an aircraft that has at least two pilot stations. Canons of construction prescribe that all language in a statute be given effect. Therefore, the FAA should construe regulatory text so that no word or clause is rendered superfluous, void or insignificant. Accordingly, the FAA interprets § 61.195(g)(2) as requiring one pilot station for the student and one pilot station for the flight instructor."

[86] *See* Limited Type Certificate Data Sheet No. AL-2, Minimum Crew. Section 61.55 sets forth the qualifications required for a person to serve as a second-in-command of an aircraft type certificated for more than one required pilot flight crewmember or in operations requiring a second-in-command pilot flight crewmember.

training set forth in § 61.55(b). Even where the regulation accounts for certain training circumstances under § 61.55, passenger and person carriage is prohibited. For example, the familiarization training requirements do not apply to a person listed in § 61.55(f), which includes, in pertinent part, a person designated as the SIC in that specific type of aircraft to receive flight training required by § 61.55, however, no passengers or cargo may be carried on the aircraft.[87] Further, § 61.55(h) permits a person to serve as SIC to meet the familiarization training requirements provided the flight is conducted under day VFR or day IFR, but no person or property may be carried on board the aircraft, other than necessary for conduct of the flight. Since observers are not receiving flight training, nor serving as a crewmember as defined in 14 CFR 1.1, they would be considered passengers. Likewise, since the flight could be conducted without an observer, any such observer would be deemed unnecessary for the conduct of the flight, and therefore prohibited from being carried aboard the flight. This scenario presupposes that the person receiving flight training has not met the requirements specified in § 61.55(f)(3) and (h)(2). Although this example highlights the potential implication of § 61.55 limitations due to comments received, there may be other FAA regulations that could preclude carriage of additional persons.

The FAA recognizes that there may be scenarios where the person receiving flight training in an aircraft that requires two pilots already meets the § 61.55 requirements to act as SIC (e.g., when a fully-qualified SIC is receiving training to become PIC and the person providing the training is fully qualified to act as PIC). In this situation, provided the activity is not prohibited by any other regulation, there may be educational value for a person observing the flight training conducted under a LODA when that person is

[87] See § 61.55(f)(3). In addition, the familiarization training does not apply to: a person who is designated and qualified as a PIC under subpart K of part 91 or part 121, 125, or 135 in that specific type of aircraft; designated as SIC under subpart K of part 91 or part 121, 125, or 135 in that specific type of aircraft; or designated as a safety pilot for purposes required by § 91.109. See § 61.55(f)(1), (2), and (4).

enrolled in a LODA training course for the same aircraft as that in which they are observing.

The FAA agrees with commenters that carriage of these persons is in the interest of safety in certain circumstances. The FAA finds that there can be educational value in observing flight training in which the observer will soon participate. Likewise, the trainee-observers must hold a pilot certificate with appropriate category and class ratings to be enrolled in training under a LODA and are, therefore, in a position to, first, accept the risks associated with flight training and, second, understand the decorum expected of an observing pilot during flight training (i.e., mitigating risk of distraction). For these reasons, this final rule revises proposed § 91.326(b)(5) to accommodate observation of flight training by up to two persons who are enrolled in the same flight training program under the LODA, provided they are seated in a forwardmost observer seat with an unobstructed view of the flightdeck and provided the operation is not prohibited by any other regulation. The final rule limits the number of trainee-observers to two because the point of the allowance is to permit direct observation of training. Generally, a maximum of two positions with an unobstructed view of the flightdeck are available on an aircraft. These positions are often referred to as "jumpseats" in larger aircraft. In smaller aircraft, the position might be a passenger seat directly behind the pilot seat. Likewise, the view of the flightdeck from more aft seats becomes obstructed, rendering the educational value void. Where there is no added educational value (i.e., the intent of the LODA authorizing such operations), the only remaining rationale for carrying such persons is cost savings, not safety. The FAA has previously limited trainee-observers to two persons in flight training exemptions, including in EAA's recent grants of exemption, with no adverse impact on safety to date.[88]

[88] See Docket FAA-2011-0656, EAA Exemption No. 18199, Condition and Limitation no. 12(c) and EAA Exemption No. 19228, Condition and Limitation no. 11(c).

In order to effectuate the addition of trainee-observers, the FAA also adds language necessary to except a limitation found in most limited category type certificate data sheets (TCDS).[89] Because trainee-observers are not considered to be receiving flight training while not seated at a pilot station, they are considered passengers. Because the TCDS contains a required placard stating the aircraft shall not be used for the carriage of passengers for hire, carriage of these trainee-observers could be in violation of § 91.9(a), which requires compliance with markings, placards, and other aircraft limitations. Therefore, new § 91.326(b)(5) includes language to supersede the operating limitation applicable under § 91.9(a).

As described in the response to CAM's comment, many large warbird aircraft require two pilots. In these cases, other regulations (e.g., § 61.55(f) and (h) as previously explained) may preclude carriage of observers during certain types of training (e.g., training a new SIC who does not yet meet the requirements of § 61.55). The FAA urges operators of large warbird aircraft to carefully evaluate the applicability of other regulations prior to carrying observers during flight training operations.

Finally, a person not seated at a pilot station could not be construed to be receiving "flight training." Therefore, EAA's proposed solution of changing "person receiving flight training" to "person(s) receiving flight training" would not have the desired effect. Although the Olshock legal interpretation asserts that an instructor may permit others on board for "instructional purposes," those persons could not be construed to be receiving flight training unless seated at a pilot station, as previously discussed. Notably, not all limited category aircraft require two pilots. In aircraft that do not require

[89] See North American B-25 TCDS no. AL-2 which states, "NOTE 2. The following placards must be prominently displayed: (a) In the passenger compartment: "This is a military type aircraft and under the Federal Aviation Regulations shall not be used for the carriage of passengers or cargo for compensation or hire". The placard and lettering shall be of a type which can be read easily from any seat in the cabin."

two pilots, § 61.55 would not present a barrier and carriage of trainee-observers during LODA operations will now be permitted, as previously described.

Therefore, this final rule will accommodate trainee observers in certain circumstances. The FAA finds this change to be in the interest of safety in part because, except in limited circumstances, persons receiving flight training under a LODA must possess at least a private pilot certificate with appropriate category rating and, in most cases, class rating prior to commencing training under a LODA. Because of this prerequisite requirement, persons receiving LODA training are in a position to assess and accept the risks associated with flight training. Likewise, it is a common practice for a trainee observer to observe flight training in progress in aircraft holding standard airworthiness certificates, and, except where otherwise prohibited by regulation, this practice has not been found to be detrimental to safety.

Importantly, this allowance does not have any effect on the applicability of any other regulation. If the carriage of additional persons is prohibited by any other regulation, it is still prohibited while operating in accordance with a LODA (other than § 91.9(a) as previously described). Likewise, this privilege is not extended to any person who is not enrolled in a LODA training program for the same aircraft as the person receiving flight training. Because of the nature of aircraft holding special airworthiness certificates, the FAA is limiting the persons who may be carried on board during operations under a LODA.

For these reasons, revised § 91.326(b)(5) will permit up to two trainee observers to be carried in certain aircraft during operations conducted under a LODA, provided the carriage is not prohibited by any other regulation, the observer is enrolled in in a LODA training course for the same aircraft, and the observation takes place from a forwardmost observer seat with an unobstructed view of the flightdeck.

4. Operations Not Requiring a LODA in § 91.326(c)

As previously discussed in this preamble, this final rule relocates the language in the NPRM's proposed § 91.326(a) to § 91.326(c). Specifically, § 91.326(c)(1) (proposed as § 91.326(a)) will set forth the circumstances under which an authorized instructor, registered owner, lessor, or lessee would be permitted to operate an aircraft for the purpose of flight training, checking, or testing, and in the case of an experimental aircraft, for a purpose other than that for which the certificate was issued.[90] Section 91.326(a), as adopted in this final rule now specifies that, notwithstanding the prohibitions in §§ 91.315, 91.319, and 91.325, a person may conduct flight training, checking, or testing in a limited category aircraft, experimental aircraft, or primary category aircraft under the provisions of § 91.326 (i.e., providing a generalized applicability paragraph within the section).

5. Uncompensated Flight Instructor Providing Training and Aircraft

EAA commented that the language in the NDAA could unintentionally preclude a completely uncompensated operation where the flight instructor is providing both the training and the aircraft. An example of such an operation could be a parent who is a flight instructor providing training to their child in their own aircraft without compensation.

The FAA agrees with the EAA's comment and modifies § 91.326 in response. Historically, the FAA has enabled flight training in experimental aircraft without a LODA only when no compensation was provided for the use of the aircraft.[91] In keeping

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[90] These circumstances were proposed as paragraphs (a)(1) through (3). This final rule does not make any substantive revisions to the circumstances and adopts them as paragraphs (c)(1)(i) through (iii).

[91] See FAA Order 8900.1, Vol. 3, Ch. 11, Sec. 1, Use of Aircraft Issued Experimental Certificates in Flight Training for Compensation or Hire, dated 5/24/2011, which states, "Flight instructors may receive compensation for providing flight training in an experimental aircraft, but may not receive compensation for the use of the aircraft in which they provide that flight training unless in accordance with a LODA issued under § 91.319(h) and as described in paragraph 3-293."

with this concept,[92] this final rule reorganizes § 91.326 and adds paragraph (c)(2) to facilitate completely uncompensated operations. The new paragraph will provide that a person may conduct flight training, checking, or testing in a limited category aircraft, experimental aircraft, or primary category aircraft without a LODA, provided that there is no compensation exchanged for that training, checking, or testing, or for the use of the aircraft. This language will permit a flight instructor to provide both flight training, checking, or testing and the aircraft without a LODA while simultaneously prohibiting any operation for compensation or hire.

6. Flight Instructors Training Pilots to Maintain or Improve Skills

The Soaring Safety Foundation (SSF) commented that the language in proposed § 91.326(a) (now § 91.326(c)) does not mirror the language in proposed § 61.193(a)(7), which authorizes flight instructors to train pilots to maintain or improve skills. SSF expressed concern that, without this specific language in § 91.326(a) (now § 91.326(c)), this type of training might not be authorized.

The FAA notes that "flight training" is defined in § 61.1 as training, other than ground training, received from an authorized instructor in flight in an aircraft. Section 61.1 also defines "authorized instructor" as, in pertinent part, a person who holds a flight instructor certificate issued under part 61 and is in compliance with § 61.197 when conducting ground training or flight training in accordance with the privileges and limitations of his or her flight instructor certificate. Sections 61.193 and 61.413 contain a list of flight instructor and sport pilot flight instructor privileges, respectively. Therefore, anything on those lists would be considered "flight training" and would be available under § 91.326 in accordance with the limitations specified.

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[92] The FAA notes that while the language in the NDAA did not explicitly speak to this fully uncompensated scenario, the legislation does not restrict uncompensated operations where the flight instructor is providing both the training and the aircraft. Rather, the legislation provides one set of conditions as not requiring a LODA, but not all of the possible conditions that the FAA may determine could be safely facilitated without requiring a LODA.

SSF also expressed concern regarding use of certain gliders under the provisions of § 91.326(a) (now § 91.326(c)). SSF argued that certain gliders, while not certificated under FAA standard airworthiness certification standards, comply with European Union Aviation Safety Agency (EASA) standards. SSF asserted that, for this reason, no LODA should be required to operate these aircraft where there is no exchange of compensation. While EASA certification standards are rigorous, until an aircraft has demonstrated compliance with FAA standard airworthiness certification standards through the certification process, the intended operation will continue to require compliance with experimental aircraft operating regulations. In the case of the aforementioned gliders, that certification will be an experimental airworthiness certificate issued in accordance with § 21.191. The FAA has always required either a LODA or exemption to operate experimental aircraft carrying persons or property for compensation or hire. The final rule does not change this long-standing requirement. Where there is no exchange of compensation (e.g., where a parent who is a flight instructor provides flight training to their child in their own aircraft), no LODA is required, as explained in further detail in the FAA's explanation of § 91.326(c)(2).

Finally, SSF suggested to change the language in § 91.326(a) (now § 91.326(c)) from "aircraft" to "airplane." The FAA notes that this would not create SSF's desired effect of excluding gliders from this part of the rule so that they may offer flight training, checking, or testing without restriction. Section 91.326(a) (now § 91.326(c)) was derived from legislation, and, therefore, the FAA cannot modify it without additional Congressional direction. Section 91.326 was reorganized for the final rule, which moved the legislative language from § 91.326(a) to § 91.326(c)(1). Section 91.326(c)(1) is a permissive regulation rather than a prohibitive one in that it enables operators of experimental aircraft to conduct flight training, checking, and testing without a LODA in certain circumstances. Changing "aircraft" to "airplane" would effectively exclude

gliders from the ability to operate without a LODA, thereby requiring a LODA for all such operations in accordance with §§ 91.319(a) and 91.326(b). Therefore, this final rule does not implement SSF's recommended revision.

7. Letters of Deviation Authority Previously Issued Under § 91.319 and Previously Issued Flight Training Exemptions from § 91.315

As previously stated, the FAA proposed § 91.326(c) to address all currently issued LODAs. Because of the revisions to § 91.326 discussed in the previous sections of this preamble, this final rule redesignates the sunset provision for all existing LODAs previously issued under § 91.319. Specifically, § 91.326(d)(1) will permit the deviation holder to continue to operate under the LODA for 24 months after the effective date of the final rule. Therefore, pursuant to § 91.326(d)(4), all LODAs terminate 24 months after the effective date of the final rule. Holders of terminated LODAs must ensure that they are either in compliance with § 91.326(c) for operations not requiring a LODA or apply for a new LODA under § 91.326(b). Proposed § 91.326(c)(2) and (3) remain substantively unchanged but are adopted as § 91.326(d)(2) and (3).[93]

The FAA notes that it also intends to sunset all currently active flight training exemptions from § 91.315. The holders of these exemptions do not need to take action until the exemption expires. Upon expiration, exemption holders must ensure that they are either in compliance with § 91.326(c) for operations not requiring a LODA or apply for a LODA under § 91.326(b). Exemptions issued for Living History Flight Experiences will not be affected by this final rule.

[93] To note, given the redesignation from proposed paragraph (c) to paragraph (d). the citation for the exception in paragraph (b) is also revised to paragraph (d).

I. Miscellaneous Issues in Part 91

1. Advisory Circular Example is Limiting

EAA expressed a concern over an example used in the LODA AC related to sport pilot training. The draft AC stated that, while training toward a pilot certificate will generally be prohibited under a LODA because of the wide availability of standard category aircraft for that purpose, the FAA would enable training toward a sport pilot certificate in certain very light aircraft. Specifically, this training would be available in low mass, high drag aircraft with an empty weight less than 650 pounds and a maximum speed in level flight with maximum continuous power (V_H) less than 87 Knots Calibrated Airspeed (KCAS). The draft AC provided a parenthetical example of such aircraft, which included two-seat powered parachutes and weight shift control aircraft.

EAA interpreted the parenthetical example to be limited to non-fixed wing aircraft, however this was not the FAA's intent. Any aircraft meeting that description may be utilized. EAA recommended deleting the parenthetical examples. The FAA agrees with this suggestion and has modified the AC accordingly.

2. Shift of Authorization Authority from FAA Headquarters to Field Offices

The proposed changes to § 91.315 enable stakeholders to seek a LODA for flight training, checking, and testing in limited category aircraft, rather than seeking an exemption, as previously required. EAA expressed concern that this new "decentralized" process moves approval from FAA Headquarters to field offices where personnel may not have the expertise necessary to evaluate these unique aircraft and operations. EAA requested that a national resource be made available for Flight Standards District Office (FSDO) staff and applicants to rely upon when processing these new LODAs.

The FAA agrees that having subject matter experts available to answer FSDO questions is important and, as such, provides field offices with an avenue to reach out to

subject matter experts in the General Aviation and Commercial Division for all general aviation operations questions. Although EAA requested that these subject matter experts be made available to applicants as well, the local FSDO should be the first line of inquiry for the regulated community. If a FSDO does not have the necessary information, they will coordinate with the appropriate division within Flight Standards Service, Office of Safety Standards (formerly known as "headquarters") to ascertain the necessary information from a subject matter expert.

3. Stallion 51-LODA Requirement Based on Aircraft Size

Stallion 51 generally supported the intent of the rulemaking but recommended revisions to simplify the approach to limited and experimental aircraft operations. Specifically, Stallion 51 proposed to retain the exemption process for § 91.315 and the LODA process for experimental aircraft but to use weight, speed, and turbine to define the permitted flight training operation. Specifically, Stallion 51 provided the example, "limited category aircraft in excess of 6000 pounds and/or V_{NE} greater than 250 knots will require an exemption to conduct flight training."

The FAA will not adopt this proposed change. Notably, several commenters supported the movement away from exemptions. For example, EAA and WOA stated that the LODA process for authorizing for-hire type-specific training is preferable to exemptions and noted that the bifurcation between LODAs and exemptions is unnecessary for aircraft with experimental certificates.

The LODA process was designed to benefit the public, as it removes the barrier of requiring a petition for exemption, which is a much lengthier, more burdensome process for both the FAA and the regulated community that does not always result in a grant of exemption due to part 11 requirements that an individual flight training provider may find difficult to establish (i.e., a public interest argument). The LODA process allows the FAA to provide individualized review and analysis to each aircraft rather than requiring an

aircraft to have a single weight, size, or speed. For these reasons, the FAA has determined that allowing limited category aircraft of all sizes, weights, and speeds to utilize the LODA process, rather than seek exemption, is in the public interest and does not adversely impact safety.

4. Section 119.1(e)(1) and (3) Comment

AOPA requested clarity in a comment regarding the proposed changes to §§ 91.315, 91.319, and 91.325. These sections contain similar prohibitions against the carriage of persons or property for compensation or hire in operations listed under § 119.1(e), which includes "student instruction" and "training flights." AOPA asserted that the use of the term "flight training" in § 91.326 does not offer the relief intended by the rulemaking because the proposals categorically exclude "student instruction" and "training flights" in limited, experimental, and primary category aircraft but would allow flight training, checking, or testing. As such, AOPA recommended a revision of §§ 91.326 and 119.1(e) to reflect more consistent nomenclature (i.e., flight training rather than training flights).

The FAA previously clarified the relationship between the terms "flight training," "student instruction," and "training flights" as used in § 119.1(e) in a legal interpretation to William Grannis.[94] As explained in the legal interpretation, when a flight involves the carriage of persons or property for compensation or hire, the operator must hold a part 119 air carrier or commercial operator certificate and operate such flights under part 121 or 135 rules. Section 119.1(e) excepts several types of operations involving the use of aircraft for compensation or hire, including student instruction and training flights. These operations may be conducted without a part 119 certificate under part 91 rules. The Grannis interpretation accurately explained the terms "student instruction" and "training flights." Specifically, "training flights" refer to operations in which a person receives

[94] Legal Interpretation to William Grannis (Aug. 3, 2017).

training for the purpose of satisfying a training requirement outside of part 61, such as crewmember training required by § 91.313. Further, "student instruction" broadly refers to an operation in which a person receives flight training from an authorized instructor (as defined in part 61).

The FAA finds that revising the terms "student instruction" and "training flights" in § 119.1(e)(1) and (3) would necessitate further changes to the regulations outside of the scope of this rulemaking. Furthermore, the FAA finds that the Grannis interpretation accurately clarifies that the term "student instruction" is used to describe part 61 flight training. Therefore, the FAA will not revise § 119.1(e)(1) and (3) at this time.

J. Severability

As discussed in section II, Congress authorized the FAA by statute to promote safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce.[95] Additionally, this final rule implements certain provisions of Public Law 115-254, the 2023 NDAA, and the 2024 FAA Reauthorization Act. Consistent with these mandates, the FAA promulgates the regulations described herein to (i) allow pilots conducting PAO to credit their flight time towards civil regulatory requirements; (ii) amend the operating rules for limited, experimental, and primary category aircraft to permit certain flight training, testing, and checking in these aircraft without a LODA; and (iii) complete miscellaneous amendments related to flight experience, flight instructor privileges, flight training in certain aircraft holding special airworthiness certificates, and the related prohibitions on conducting

[95] 49 U.S.C. subtitle VII, subpart i of part A, section 40113, Administrative, and subpart iii, section 44701, General Requirements; section 44702, Issuance of Certificates; section 44703, Airman Certificates; section 44704, Type Certificates, Production Certificates, Airworthiness Certificates, and Design and Production Organization Certificates; section 44705, Air Carrier Operating Certificates; and section 44707, Examination and Rating of Air Agencies.

these activities for compensation or hire. However, the FAA recognized that certain provisions of this final rule approach operations and airman certification in unique ways due to the different regulatory frameworks provided by parts 61 and 91. Therefore, the FAA finds that the various provisions of this final rule are severable and able to operate functionally if severed from each other. In the event a court were to invalidate one or more of this final rule's unique provisions, the remaining provisions should stand, thus allowing the FAA to proceed with revising the herein referenced regulations within its Congressionally authorized role of promoting safe flight of civil aircraft in air commerce.

V. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866, Executive Order 13563, and Executive Order 14094 ("Modernizing Regulatory Review") direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate 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 current threshold after adjustment for inflation is $183 million using the most current (2023) Implicit Price Deflator for the Gross Domestic Product. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this rule.

In conducting these analyses, the FAA has determined that this rule: will result in benefits that justify costs; is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, as amended; will not have a significant economic impact on a substantial number of small entities; will not create unnecessary obstacles to the foreign commerce of the United States; and will not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector.

A. Regulatory Impact Analysis

1. Summary

The FAA analyzed the costs and benefits for the provisions related to PAO and the provisions related to training, testing, and checking in certain aircraft with special airworthiness certificates separately. The provisions related to PAO impose no new costs, and the FAA expects the rule will reduce the costs for pilots conducting PAO to maintain their civil certificates and ratings. As calculated in the Paperwork Reduction Act analysis, the provisions related to training, testing, and checking impose approximately $100,000 in total cumulative one-time costs (undiscounted) over a period of two years to current LODA holders and the FAA. Roughly half of these costs stem from the requirement for the current approximately 180 LODA holders who broadly offer certain aircraft with special airworthiness certificates for training to reapply within two years of the effective date of the final rule. The other half of the costs include the time costs incurred by the FAA in processing these applications over the first two years. However, the FAA expects the cost savings from the streamlined regulatory framework, and the safety benefits from greater access to specialized training in aircraft with certain special airworthiness certificates, to exceed the paperwork costs. Overall, the FAA concluded that this rule will maintain and promote safety with minimal costs. Because the FAA did not receive any public comments related to the Regulatory Impact Analysis in the NPRM and because the FAA made only minimal changes with no discernable economic impact to the final rule

relative to the NPRM, the FAA presents the economic analysis from the NPRM in this final rule.

2. Logging Flight Time in Public Aircraft Operations

The FAA requires pilots to log flight time used to meet training, aeronautical experience, and recent flight experience requirements for civil pilot certificates and ratings. Currently, logging of flight time in aircraft used for PAO is limited to official law enforcement flights. The rule extends logging pilot flight time in PAO not only to forestry and fire protection services, as directed by section 517 of the FAA Reauthorization Act of 2018 but also to any PAO, including operations involving national defense, intelligence missions, search and rescue, aeronautical research and biological or geological resource management. The FAA expects the rule to lower the cost for pilots conducting PAO to maintain their civil certificates and ratings. Although pilots conduct PAO outside of FAA civil certification and certain safety oversight regulations, each government entity (e.g., State governments) may maintain its own certification system and requirements for pilots. For many government entities, this includes adopting the same standards as those codified in 14 CFR to ensure safety and comply with liability insurance requirements.

Allowing pilots to credit their PAO flight time enables PAO pilots to meet FAA flight experience and recency requirements in the course of their duties, thereby avoiding costs required to accrue flight time and recent experience in civil aircraft operations. These avoided costs could include avoided travel time, flight time, fuel costs, and costs for use of a civil aircraft. Additionally, the FAA finds that recording PAO flight time will not impose additional costs because PAO pilots already record their flight time to meet the safety and insurance requirements of their employers. For this reason, the FAA will allow pilots to retroactively credit PAO flight time. The FAA concludes that the PAO provisions of the rule will not adversely affect safety, impose any additional costs, or

raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in Executive Order 12866 as amended by Executive Order 14094.

3. Flight Training, Testing, or Checking for Compensation in Certain Aircraft With Special Airworthiness Certificates

Consistent with the 2023 NDAA, the rule allows owners or operators of experimental aircraft to receive training, testing, and checking in their aircraft without a LODA in certain circumstances. The rule extends the provision to training, testing, and checking in limited category and primary category aircraft. Additionally, the rule moves the current LODA process for experimental aircraft in § 91.319(h) to § 91.326(b) and extends the LODA process to include limited category and experimental light sport aircraft. The goal is to promote safety by making it simpler for pilots to receive elective or specialized training relevant to aircraft they regularly fly while also ensuring effective training and maintenance standards in certain aircraft with special airworthiness certificates broadly offered for training, checking, or testing, for compensation.

Overall, the FAA expects the training provision to increase safety, clarify and simplify regulatory requirements, reduce compliance costs for operators, administrative costs for the FAA, and time and travel costs for pilots seeking elective or specialized training, testing, or checking. The FAA evaluated costs and benefits against the baseline established by the "Notification of Policy for Flight Training in Certain Aircraft," published in the *Federal Register* July 12, 2021, as well as the recently passed 2023 NDAA, and concluded the cost impacts are modest and the rule does not raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in Executive Order 12866 as amended by Executive Order 14094.

4. Cost Savings

The FAA expects the rule to generate cost savings for owners or operators of certain aircraft with special airworthiness certificates who seek specialized training, testing, or checking in aircraft they own or regularly operate. Under current rules, owners or operators of limited and primary category aircraft must petition the FAA for an exemption. The recently passed 2023 NDAA eliminated the LODA requirement for owners and operators of experimental aircraft receiving training in their own aircraft. The rule codifies the legislation with regard to LODAs for experimental aircraft and eliminates the LODA requirement for owners and operators who receive training, testing, or checking in their aircraft and pay compensation for instruction. The elimination of the exemption requirements will result in time savings for owners and operators who will no longer need to apply for an exemption. Likewise, the rule reduces the administrative costs at the FAA associated with evaluating and tracking exemption petitions.

5. Costs and Cost Savings for Operations Broadly Offered or Advertised

Under the rule, if an operator of experimental or limited category aircraft broadly offers or advertises flight training, checking, and testing in these aircraft, the operator must obtain prior approval from the FAA in the form of a LODA. To obtain a LODA, the operator must submit an application to the FAA that includes an aircraft-specific training program at least 60 days in advance of training operations. Under the rule, operators of certain primary category aircraft will not require a LODA and will no longer need to petition for an exemption to conduct training, testing, or checking.

Importantly, the new LODA requirements under § 91.326(b) are similar to the current LODA requirements under § 91.319(h) for operators of certain experimental aircraft who broadly offer their aircraft for training, testing, or checking. The FAA is also terminating current training LODAs within two years of the effective date of this final

rule. However, to ensure that all operations in which an aircraft with a special airworthiness certificate is "held out" for training, testing, or checking comply with the requirements, holders of current exemptions and LODAs permitting these training operations will need to apply for a LODA. The FAA requires that these exemption and LODA holders reapply within two years of the effective date of this final rule.

The FAA finds that the costs of the LODA requirement for training operations in experimental and limited category aircraft "held out" broadly for training will be small relative to the current regulatory baseline. The costs and cost savings will vary across groups affected by the regulation. Therefore, the FAA evaluated the costs separately for each of the identifiable interest groups expected to realize costs or savings.

Experimental aircraft operators who currently hold LODAs under § 91.319(h) to offer their aircraft broadly for training will incur the cost of reapplying for their LODA within two years of the effective date of this final rule. The FAA estimates the reapplication requirement would generate approximately $100,000 in total undiscounted costs within the first two years following the effective date of this final rule. As shown in the PRA section of this preamble, this estimate includes the time costs to the approximately 180 current LODA holders who reapply and the FAA, which must process these applications.

Under current guidance, LODA applicants already submit most of the requirements related to training plans, instructor qualifications, maintenance, airworthiness, and recordkeeping in order to successfully obtain and maintain a LODA. For the most part, the cost of reapplying will consist of the time to gather the relevant information and submit the new application. Current LODA holders who reapply successfully will gain the benefit of broadly offering their aircraft for flight testing and checking. Current LODAs only allow operators to broadly offer or advertise their aircraft for flight training and do not permit checking or testing.

Similarly, the FAA expects minimal costs for operators of limited category aircraft with exemptions to apply for a LODA prior to expiration of their exemptions. Currently, there are fewer than five active training exemptions for limited category aircraft. Moreover, these exemptions normally only have a duration of two years, and the FAA expects most exemption holders to already meet most of the LODA requirements outlined in the accompanying LODA Advisory Circular. The cost will consist of the time to gather the required information and submit a new LODA application.

For future LODA applicants who seek to broadly offer their experimental or limited category aircraft for training, testing, or checking, the rule is expected to lower compliance costs. Although the final rule LODA requirements are similar to current requirements for operators who broadly offer aircraft holding certain special airworthiness certificates for training, the simplified regulatory structure and guidance in the accompanying advisory circular are expected to make it easier for potential applicants to understand requirements and submit a successful application.

Overall, the FAA does not expect this final rule to significantly increase administrative costs at the FAA. The FAA will incur costs within the first two years of this final rule's effective date to process LODA applications from the small subset of current holders of LODAs or exemptions required to reapply under this final rule. However, in the long run, the streamlined regulatory structure and guidance will reduce the amount of time the FAA must spend obtaining additional information from applicants and evaluating applications.

Finally, the clarification and simplification of the LODA process for operators of aircraft with certain special airworthiness certificates who advertise or broadly offer their aircraft for training might ultimately lower travel costs for pilots seeking certain types of supplemental and specialized training. If more operators successfully apply for LODAs to broadly offer specialized training, pilots interested in receiving this optional specialized

training might not have to travel as far to receive it. For example, the FAA recognizes that training in an ELSA is beneficial for pilots to gain familiarity with the performance and handling qualities of other light-sport aircraft and ultralights. Currently, there are some two-seat aircraft that perform and handle similarly to an ultralight, certificated as Special Light-Sport Aircraft (SLSA) available to conduct training but not available in sufficient numbers for widespread availability. Under the rule, the availability of ELSA for training through LODAs might enable pilots of other light-sport aircraft and ultralights to receive optional training without traveling as far, consequently reducing fuel costs incurred from travel as well as the time cost of travel.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) and the Small Business Jobs Act of 2010 (Pub. L. 111–240), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term "small entities" comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

As described in the Regulatory Evaluation and the Regulatory Flexibility Analysis in the NPRM, the FAA expects the rule to have minimal economic impact on small entities. The FAA did not receive any public comments related to this determination. Therefore, as provided in section 605(b) of the RFA and based on the foregoing, the head of FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this final rule and determined that the final rule responds to a domestic safety objective. The FAA has determined that this final rule is not considered an unnecessary obstacle to trade.

D. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or Tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those costs. The FAA determined that this final rule will not result in the expenditure of $183 million or more by State, local, or Tribal governments, in the aggregate, or the private sector, in any one year.

E. 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. According to the 1995 amendments to the Paperwork Reduction Act

(5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

The FAA has requested OMB approval for a new one-time information collection, titled "One Time Re-Application for Letter of Deviation Authority (LODA) for Experimental Aircraft Broadly Offered for Training, Testing or Checking Under Part 91," associated with this rule. The FAA notes that when the FAA submitted this information collection associated with the NPRM to OMB for its review, OMB assigned control number 2120-0819. The FAA has submitted information collection 2120-0816 to OMB for final approval to allow the FAA to collect this information.

Summary: This final rule creates § 91.326(b), which establishes unified requirements for operators who broadly offer certain aircraft with special airworthiness certificates for flight training, testing, or checking to obtain prior approval from the FAA in the form of a LODA. Through the LODA process, the FAA provides oversight of operators who advertise or broadly offer certain aircraft with special airworthiness certificates for elective and specialized flight training, testing, and checking. The FAA expects that § 91.326(b) and the advisory circular accompanying this final rule will ensure consistency and clarify the application process, thereby making it easier for potential applicants to understand requirements and submit a successful application.

Prior to this final rule, § 91.319(h) permitted operators of certain experimental aircraft to apply for LODAs permitting them to advertise or broadly offer their aircraft for flight training, testing, or checking in exchange for compensation that included use of the aircraft. The FAA notes that when it created the LODA framework under § 91.319(h), it did not initially submit an information collection.[96] Therefore, the FAA published a

[96] See Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft, 69 FR 44771 (Jul. 27, 2004). In the final rule, the FAA amended § 91.319 by adding § 91.319(h) to allow deviation authority from the provisions of § 91.319(a) for the purpose of conducting flight training.

separate notice to revise OMB Control Number 2120-0005 for information collection related to previous LODA applications under § 91.319(h) for flight training, testing, and checking in certain experimental aircraft prior to this final rule.[97]

This final rule terminates all LODAs issued under § 91.319(h) for training operations for compensation in experimental aircraft within two years of the effective date of this final rule. Exemptions issued for flight training in limited and primary category aircraft will not be renewed. Exemptions issued for Living History Flight Experiences will not be affected by this final rule. The FAA expects operators of experimental or limited category aircraft with active LODAs or exemptions, respectively, who broadly offer their aircraft for training to apply for a LODA under § 91.326(b) within this time period. Previously, the FAA issued LODAs without expiration dates for eligible operators who broadly offer their aircraft for training. The FAA will terminate those LODAs to ensure that all operators comply with the final rule requirements. The burden analysis in this final rule only applies to holders of active LODAs who must reapply within two years of the effective date of this final rule, OMB Control Number 2120-0819.

Public Comments: The FAA did not receive any comments on the information collection requirement.

Use: The FAA will use the information provided by LODA applicants to promote safety for specialized flight training, testing, or checking offered to the public in experimental and limited category aircraft. The LODA framework enables the FAA to provide oversight to ensure effective training and maintenance of the aircraft.

Respondents (including number of): There are approximately 180 active LODA holders for operations under 14 CFR 91.319 that the FAA expects to reapply.

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[97] See Clearance of Renewed Approval of Information Collection: General Operating and Flight Rules FAR 91 and FAR 107 (Feb. 14, 2022), 87 FR 8335.

Frequency: One time per applicant. The proposed LODAs do not have an expiration period.

Annual Burden Estimate: For current LODA holders who reapply within the first two years of the effective date of this final rule, the FAA estimates a one-time burden of four hours per applicant. The FAA expects the applicant to keep the required information as a condition of the current LODA, so the burden of reapplying will consist of the time to gather the required information and resubmit. Current LODA holders are already required to meet the recordkeeping and other proposed requirements. Therefore, this final rule creates no new annual burden for current LODA holders who reapply. The LODAs do not have an expiration date, so there will be no renewal costs. The FAA assumes the burden hours per application for the FAA to process applications from current LODA holders who reapply will be four hours.

Table 1 presents the annual burden hours and undiscounted costs for the approximately 180 current LODA holders required to reapply within the first two years of the effective date of this final rule. Table 2 presents the burden estimate and costs for the Federal Government to process these LODA applications. The total undiscounted cost of burden hours for applicants and the FAA combined is estimated to be $102,642 over two years. Total discounted (at 7 percent) cost of burden hours is estimated to be $91,743 over two years. Total annualized costs at a 7 percent discount rate are $47,423.

Table 1-Total Burden Hours and Costs for Current LODA Holders Who Must Reapply

Year	Number of LODA applications from current LODA holders [1]	Hours per application current LODA holders	Total burden hours	Total cost for applicants undiscounted [2]
1	60	4	240	$15,181
2	120	4	480	30,362
Total			720	45,543
Mean			360	22,772
LODA = Letter of Deviation Authority.				

Table 1-Total Burden Hours and Costs for Current LODA Holders Who Must Reapply

Year	Number of LODA applications from current LODA holders [1]	Hours per application current LODA holders	Total burden hours	Total cost for applicants undiscounted [2]

[1] The FAA assumes that approximately one-third of current LODA holders will reapply the first year after the effective date of a final rule, and the remaining LODA holders will reapply in the second year.

[2] Undiscounted applicant cost calculated as burden hours times average labor rate including benefits. The FAA used an average wage, including benefits of $63.25, which is the average wage of flight instructors ($43.14) divided by the percent of total employer costs of employee compensation represented by wages (68.2%) to account for benefits (31.8%). Flight instructor wages are the Bureau of Labor Statistics wage estimate for commercial pilots employed at technical and trade schools. Accessed April 12, 2022, www.bls.gov/oes/2021/may/oes532012.htm.

Table 2. Total Burden Hours and Cost to Federal Government to Process Applications from Current LODA Holders who Must Reapply

Year	Number of LODA Applications from Current LODA Holders[1]	Hours Per Application FAA	Total Burden Hours FAA	FAA Cost Undiscounted[2]
1	60	4	240	$19,033
2	120	4	480	$38,066
Total	180		720	$57,098
Mean	90		360	$28,549

LODA=Letter of Deviation Authority

1. The FAA assumes that approximately one-third of current LODA holders will reapply the first year after the effective date of this final rule, and the remaining LODA holders will reapply in the second year.

2. Undiscounted applicant cost calculated as burden hours times average labor rate including benefits. The FAA used an average wage including benefits of $79.30, which is the wage of FG-13 Step 5 FAA aviation safety inspectors ($58.20) in the Washington-Baltimore-Arlington Metro Area in 2022 plus benefits (36.25% of wages).

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and

has identified the following differences with these regulations. The FAA notes that under the final rule § 61.51(f)(4), pilots designated by a government entity as an SIC may log SIC time during authorized PAO with certain limitations. The FAA determined that this provision is inconsistent with the ICAO standard for logging. Accordingly, all pilots who log flight time under this provision and apply for an ATP certificate will have a limitation on the certificate indicating that the pilot does not meet the PIC aeronautical experience requirements of ICAO. This limitation may be removed when the pilot presents satisfactory evidence that he or she has met the ICAO standards.

The FAA intends to file a difference with ICAO.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this final rule qualifies for the categorical exclusion identified in paragraph 5–6.6f and involves no extraordinary circumstances.

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order (E.O.) 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, will not have federalism implications.

B. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,[98] and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures,[99] the FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes; or to affect uniquely or significantly their respective Tribes. At this point, the FAA has not identified any unique or significant effects, environmental or otherwise, on Tribes resulting from this final rule.

C. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under E.O. 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The FAA has determined that it is not a "significant energy action" under the executive order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

D. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or

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[98] 65 FR 67249 (Nov. 6, 2000).
[99] FAA Order No. 1210.20 (Jan. 28, 2004), available at www.faa.gov/documentLibrary/media/1210.pdf.

prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action will have no effect on international regulatory cooperation.

VII. Additional Information

A. Electronic Access and Filing

A copy of the NPRM, all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the docket number listed above. A copy of this final rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at www.federalregister.gov and the Government Publishing Office's website at www.govinfo.gov. A copy may also be found on the FAA's Regulations and Policies website at www.faa.gov/regulations_policies.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this final rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

B. 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. A small entity with

questions regarding this document may contact its local FAA official or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 11

Administrative practice and procedure, Reporting and recordkeeping requirements.

14 CFR Part 61

Aircraft, Airmen, Aviation safety, Flight instruction, Recreation and recreation areas, Reporting and recordkeeping requirements, Security measures, Teachers.

14 CFR Part 91

Agriculture, Air carriers, Air taxis, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Charter flights, Freight, Reporting and recordkeeping requirements, Security measures, Transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

Authority: 49 U.S.C. 106(f), 40113, 44701.

2. Amend § 1.1 by revising paragraph (1)(ii) of the definition of "Public aircraft" to read as follows:

§ 1.1 General definitions.

* * * * *

Public aircraft * * *

(1) * * *

(ii) For the sole purpose of determining public aircraft status, *governmental function* means an activity undertaken by a government, such as national defense, intelligence missions, firefighting, search and rescue, law enforcement (including transport of prisoners, detainees, and illegal aliens), aeronautical research, biological or geological resource management (including data collection on civil aviation systems undergoing research, development, test, or evaluation at a test range (as such term is defined in 49 U.S.C. 44801)), infrastructure inspections, or any other activity undertaken by a governmental entity that the Administrator determines is inherently governmental.

* * * * *

PART 11—GENERAL RULEMAKING PROCEDURES

3. The authority citation for part 11 continues to read as follows:

Authority: 49 U.S.C. 106(f), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701-44702, 44711, 46102, and 51 U.S.C. 50901-50923.

4. Amend § 11.201 in the table in paragraph (b) by revising the entry for part 91 to read as follows:

§ 11.201 Office of Management and Budget (OMB) control numbers assigned under the Paperwork Reduction Act.

* * * * *

(b) * * *

14 CFR part or section identified and described	Current OMB control number
* * * * * *	*
Part 91	2120-0005, 2120-0026, 2120-0027, 2120-0573, 2120-0606, 2120-0620, 2120-0631, 2120-0651, 2120-0819, 2120-0820
* * * * * *	*

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

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

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701-44703, 44707, 44709-44711, 44729, 44903, 45102-45103, 45301-45302; Sec. 2307 Pub. L. 114-190, 130 Stat. 615 (49 U.S.C. 44703 note); and sec. 318, Pub. L. 115-254, 132 Stat. 3186 (49 U.S.C. 44703 note).

6. Amend § 61.1 in paragraph (b) by adding the definition of "Passenger" in alphabetical order to read as follows:

§ 61.1 Applicability and definitions.

* * * * *

(b) * * *

Passenger means any person on board an aircraft other than a crewmember, FAA personnel, manufacturer personnel required for type certification, or a person receiving or providing flight training, checking, or testing as authorized by this part.

* * * * *

7. Amend § 61.51 by:

a. Revising paragraphs (f)(2) and (3);

b. Adding paragraph (f)(4); and

c. Revising paragraph (j)(4).

The revisions read as follows:

§ 61.51 Pilot logbooks.

* * * * *

(f) * * *

(2) Holds the appropriate category, class, and instrument rating (if a class or instrument rating is required for the flight) for the aircraft being flown, and more than one pilot is required under the type certification of the aircraft or the regulations under which the flight is being conducted;

(3) Serves as second-in-command in operations conducted in accordance with § 135.99(c) of this chapter when a second pilot is not required under the type certification of the aircraft or the regulations under which the flight is being conducted, provided the requirements in § 61.159(c) are satisfied; or

(4) Is designated by a government entity as second-in-command when operating in accordance with paragraph (j)(4) of this section, provided the aircraft used is a large aircraft or turbo-jet powered airplane or holds or originally held a type certificate that requires a second pilot provided that:

(i) Second-in-command time logged under this paragraph (f)(4) may not be used to meet the aeronautical experience requirements for the private or commercial pilot certificates or an instrument rating; and

(ii) An applicant for an airline transport pilot certificate who logs second in command time under this paragraph (f)(4) in an aircraft that is not type certificated for two pilots issued an airline transport pilot certificate with the limitation "Holder does not meet the pilot in command aeronautical experience requirements of ICAO," as prescribed under Article 39 of the Convention on International Civil Aviation if the applicant does not meet the ICAO requirements contained in Annex 1 "Personnel Licensing" to the Convention on International Civil Aviation. An applicant is entitled to an airline transport pilot certificate without the ICAO limitation specified under this paragraph (f)(4)(ii) when the applicant presents satisfactory evidence of having met the ICAO requirements and otherwise meets the aeronautical experience requirements of § 61.159 or § 61.161, as applicable.

* * * * *

(j) * * *

(4) An aircraft used to conduct a public aircraft operation under 49 U.S.C. 40102(a)(41) and 40125.

* * * * *

8. Amend § 61.57 by revising paragraphs (a)(1) introductory text and (b)(1) introductory text and adding paragraphs (e)(5) and (6) to read as follows:

§ 61.57 Recent flight experience: Pilot in command.

(a) * * *

(1) Except as provided in paragraph (e) of this section, no person may act as a pilot in command of an aircraft carrying persons or of an aircraft certificated for more than one pilot flight crewmember unless that person has made at least three takeoffs and three landings within the preceding 90 days, and—

* * * * *

(b) * * *

(1) Except as provided in paragraph (e) of this section, no person may act as pilot in command of an aircraft carrying persons during the period beginning 1 hour after sunset and ending 1 hour before sunrise, unless within the preceding 90 days that person has made at least three takeoffs and three landings to a full stop during the period beginning 1 hour after sunset and ending 1 hour before sunrise, and—

* * * * *

(e) * * *

(5) Paragraphs (a) and (b) of this section do not apply to a person receiving flight training from an authorized instructor, provided:

(i) The flight training is limited to the purpose of meeting the requirements of paragraphs (a) and (b) of this section;

(ii) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the person receiving flight training meets all other requirements to act as pilot in command of the aircraft; and

(iii) The authorized instructor and the person receiving flight training are the sole occupants of the aircraft.

(6) Paragraphs (a) and (b) of this section do not apply to the examiner or the applicant during a practical test required by this part.

* * * * *

9. Amend § 61.159 by revising paragraph (e) to read as follows:

§ 61.159 Aeronautical experience: Airplane category rating.

* * * * *

(e) An applicant who credits time under paragraphs (b) through (d) of this section and § 61.51(f)(4) is issued an airline transport pilot certificate with the limitation "Holder does not meet the pilot in command aeronautical experience requirements of ICAO," as prescribed under Article 39 of the Convention on International Civil Aviation.

* * * * *

10. Amend § 61.161 by revising paragraph (d) to read as follows:

§ 61.161 Aeronautical experience: Rotorcraft category and helicopter class rating.

* * * * *

(d) An applicant who credits time under paragraph (c) of this section and § 61.51(f)(4) is issued an airline transport pilot certificate with the limitation "Holder does not meet the pilot in command aeronautical experience requirements of ICAO," as prescribed under Article 39 of the Convention on International Civil Aviation.

* * * * *

11. Amend § 61.193 by revising paragraphs (a) introductory text and (a)(7) and adding paragraph (c) to read as follows:

§ 61.193 Flight instructor privileges.

(a) A person who holds a flight instructor certificate is authorized within the limitations of that person's flight instructor certificate and ratings to conduct ground training, flight training, certain checking events, and to issue endorsements related to:

* * * * *

(7) A flight review, operating privilege, or recency of experience requirement of this part, or training to maintain or improve the skills of a certificated pilot;

* * * * *

(c) The privileges authorized in this section do not permit a person who holds a flight instructor certificate to conduct operations that would otherwise require an air carrier or operating certificate or specific authorization from the Administrator.

12. Amend § 61.413 by revising paragraphs (a) introductory text and (a)(6) and adding paragraph (c) to read as follows:

§ 61.413 What are the privileges of my flight instructor certificate with a sport pilot rating?

(a) If you hold a flight instructor certificate with a sport pilot rating, you are authorized, within the limits of your certificate and rating, to conduct ground training, flight training, certain checking events, and to issue endorsements related to:

* * * * *

(6) A flight review or operating privilege for a sport pilot, or training to maintain or improve the skills of a sport pilot;

* * * * *

(c) The privileges authorized in this section do not permit a person who holds a flight instructor certificate with a sport pilot rating to conduct operations that would otherwise require an air carrier or operating certificate or specific authorization from the Administrator.

PART 91 – GENERAL OPERATING AND FLIGHT RULES

13. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506-46507, 47122, 47508, 47528-47531, 47534, Pub. L. 114-190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

14. Revise § 91.315 to read as follows:

§ 91.315 Limited category civil aircraft: Operating limitations.

Except as provided in § 91.326, no person may operate a limited category civil aircraft carrying persons or property for compensation or hire in operations that:

(a) Require an air carrier or commercial operator certificate issued under part 119 of this chapter;

(b) Are listed in § 119.1(e) of this chapter;

(c) Require management specifications for a fractional ownership program issued in accordance with subpart K of this part; or

(d) Are conducted under part 129, 133, or 137 of this chapter.

15. Amend § 91.319 by:

a. Revising paragraphs (a) introductory text, (a)(2), (d)(3), (e), and (f); and

b. Removing and reserving paragraph (h).

The revisions read as follows:

§ 91.319 Aircraft having experimental certificates: Operating limitations.

(a) Except as provided in § 91.326, no person may operate an aircraft that has an experimental certificate—

* * * * *

(2) Carrying persons or property for compensation or hire in operations that:

(i) Require an air carrier or commercial operator certificate issued under part 119 of this chapter;

(ii) Are listed in § 119.1(e) of this chapter;

(iii) Require management specifications for a fractional ownership program issued in accordance with subpart K of this part; or

(iv) Are conducted under part 129, 133, or 137 of this chapter.

* * * * *

(d) * * *

(3) Notify air traffic control of the experimental nature of the aircraft when utilizing air traffic services.

(e) No person may operate a light-sport aircraft that is issued an experimental certificate under § 21.191 of this chapter for compensation or hire, except:

(1) A person may operate an aircraft issued an experimental certificate under § 21.191(i)(1) of this chapter to tow a glider that is a light-sport aircraft or unpowered ultralight vehicle in accordance with § 91.309; or

(2) A person may operate a light-sport aircraft issued an experimental certificate under § 21.191 of this chapter to conduct operations authorized under § 91.326.

(f) No person may lease a light-sport aircraft that is issued an experimental certificate under § 21.191 of this chapter, except—

(1) In accordance with paragraph (e)(1) of this section; or

(2) To conduct a solo flight in accordance with a training program included as part of the deviation authority specified under § 91.326(b).

* * * * *

16. Revise § 91.325 to read as follows:

§ 91.325 Primary category aircraft: Operating limitations.

(a) Unless provided for in this section, no person may operate a primary category aircraft carrying persons or property for compensation or hire in operations that:

(1) Require an air carrier or commercial operator certificate issued under part 119 of this chapter;

(2) Are listed in § 119.1(e) of this chapter;

(3) Require management specifications for a fractional ownership program issued in accordance with subpart K of this part; or

(4) Are conducted under part 129, 133, or 137 of this chapter.

(b) Except as provided in § 91.326(c), no person may operate a primary category aircraft that is maintained by the pilot-owner under an approved special inspection and maintenance program except—

(1) The pilot-owner; or

(2) A designee of the pilot-owner, provided that the pilot-owner does not receive compensation for the use of the aircraft.

(c) A primary category aircraft that is maintained by an appropriately rated mechanic or an authorized certificated repair station in accordance with the applicable provisions of part 43 of this chapter may be used to conduct flight training, checking, and testing for compensation or hire.

17. Add § 91.326 to read as follows:

§ 91.326 Exception to operating certain aircraft for the purposes of flight training, flightcrew member checking, or flightcrew member testing.

(a) *General*. Notwithstanding the prohibitions in §§ 91.315, 91.319(a), and 91.325, a person may conduct flight training, checking, or testing in a limited category aircraft, experimental aircraft, or primary category aircraft under the provisions of this section.

(b) *Operations requiring a letter of deviation authority.* Except as provided in paragraphs (c) and (d) of this section, no person may conduct flight training, checking, or testing in a limited category or experimental aircraft without deviation authority issued under this paragraph (b).

(1) No person may operate under this section without a letter of deviation authority (LODA) issued by the Administrator.

(2) The FAA may deny an application for a letter of deviation authority if it determines the deviation would not be in the interest of safety or is unnecessary. The FAA may cancel or amend a letter of deviation authority if it determines that the deviation holder has failed to comply with the conditions and limitations or at any time if the Administrator determines that the deviation is no longer necessary or in the interest of safety.

(3) An applicant must submit a request for deviation authority in a form and manner acceptable to the Administrator at least 60 days before the date of intended operations. A request for deviation authority must contain a complete description of the proposed operation that establishes a level of safety equivalent to that provided under the regulations for the deviation requested, including:

(i) A letter identifying the name and address of the applicant;

(ii) The name and contact information of the individual with ultimate responsibility for operations authorized under the deviation authority;

(iii) Specific aircraft make(s), model(s), registration number(s), and serial number(s) to be used;

(iv) Copies of each aircraft's airworthiness certificate, including the FAA-issued operating limitations, if applicable;

(v) Ejection seat information, if applicable;

(vi) A detailed training program that demonstrates the proposed activities will meet the intended training objectives;

(vii) A description of the applicant's process to determine whether a trainee has a specific need for formation or aerobatic training, or training leading to the issuance of an endorsement, if those types of training are being requested; and

(viii) Any other information that the Administrator deems necessary to evaluate the application.

(4) The holder of a letter of deviation authority must comply with any conditions and limitations provided in that letter of deviation authority. Unless otherwise authorized by the Administrator, the deviation authority will include the following conditions and limitations:

(i) The operator must use the aircraft-specific flight and ground training program for the training authorized by the letter of deviation authority. Demonstration flights, discovery flights, experience flights, and other flights not related to the training program are not authorized.

(ii) As appropriate to the aircraft being flown, all trainees must hold category and class ratings; a type rating, Authorized Experimental Aircraft authorization, or temporary Letter of Authorization; and endorsements listed in § 61.31 of this chapter, as appropriate, with the following exceptions:

(A) Persons receiving gyroplane training or training leading to the initial issuance of a sport pilot certificate or flight instructor certificate with a sport pilot rating in a low mass, high drag aircraft with an empty weight less than 650 pounds and a $V_H \leq 87$ Knots Calibrated Airspeed (KCAS) are not required to hold category or class ratings. For training leading to an endorsement for additional sport pilot privileges, the pilot receiving the training must hold at least a sport pilot certificate with appropriate category and class ratings and endorsements issued under § 61.31 of this chapter, as appropriate.

(B) Persons with a specific need to receive training toward the issuance of an endorsement are not required to hold the § 61.31 of this chapter endorsement sought. Any endorsements being provided must be authorized in the LODA.

(C) Persons receiving jet unusual attitude and upset recovery training, limited category type rating training, or authorized experimental aircraft authorization training, if

required for the type of aircraft being flown, are not required to hold the applicable type rating, authorized experimental authorization rating, or a temporary Letter of Authorization prior to the commencement of training.

(D) For ultralight-style training, the person receiving training is not required to meet category and class ratings or § 61.31 of this chapter endorsement requirements. However, if the flight training includes a solo flight segment, this does not relieve the person receiving training from the requirements of part 61, subpart C, of this chapter. This training is limited to a low mass, high drag aircraft with an empty weight less than 650 pounds and a maximum speed in level flight with maximum continuous power less than 87 KCAS.

(iii) If the aircraft is equipped with ejection seats and systems, such systems must be rigged, maintained, and inspected in accordance with the manufacturer's recommendations. Before providing training in aircraft equipped with operable ejection systems, whether armed or not armed, all aircraft occupants must complete a course of ejection seat training.

(iv) When conducting spin and upset training, the operator must maintain a minimum recovery altitude of 6,000 feet above ground level unless the Administrator authorizes a lower altitude.

(v) A copy of the LODA must be carried on board the aircraft during flight training conducted under the LODA.

(vi) The LODA holder must keep a record of the training given for a period of 36 calendar months from the completion date of the training. The authorized instructor must sign the trainee's training record certifying that the flight training or ground training was given. The training record must include the following:

(A) The name and certificate number (if applicable) of the trainee;

(B) The name, signature, and certificate number of the instructor;

(C) The date trained;

(D) The training received;

(E) The trainee's specific need for training, if applicable.

(vii) Notwithstanding § 43.1(b) of this chapter or § 91.409(c)(1), all aircraft must:

(A) Except for turbine powered or large aircraft, within the preceding 100 hours of time in service, have received an annual, 100-hour, or condition inspection equivalent to the scope and detail of appendix D to part 43 of this chapter and been approved for return to service in accordance with part 43. The 100-hour limitation may be exceeded by not more than 10 hours while enroute to reach a place where the inspection can be done. The excess time used to reach a place where the inspection can be done must be included in computing the next 100 hours of time in service; or

(B) Except for turbine powered or large aircraft, be inspected in accordance with an FAA-approved inspection program that includes provisions for ensuring continued airworthiness and recording the current status on life-limited parts and in accordance with the manufacturer's instructions.

(C) For turbine-powered or large aircraft, be inspected in accordance with an FAA-approved inspection program that meets the scope and detail of the requirements of § 91.409(e), (f)(4), and (g) for ensuring continued airworthiness and recording time remaining on life-limited parts in accordance with the manufacturer's instructions.

(viii) Notwithstanding any exception due to the experimental airworthiness certification of the aircraft, LODA holders with experimental aircraft must comply with FAA Airworthiness Directives applicable to any corresponding make or model aircraft holding a different type of airworthiness certificate or applicable to any article installed on the aircraft. The LODA holder must evaluate the aircraft and its articles to determine if compliance with the FAA Airworthiness Directive is necessary for the continued safe operation of the aircraft. LODA holders must keep a maintenance record entry of those

FAA Airworthiness Directives evaluated. For those FAA Airworthiness Directives for which the LODA holder determined compliance was necessary for the continued safe operation of the aircraft, the record must also include the method of compliance, and if the FAA Airworthiness Directive requires recurring action, the time and date when the next action is required.

(5) Only the following persons may be on board the aircraft during operations conducted under the deviation authority:

(i) The authorized instructor, designated examiner, person receiving flight training or being checked or tested, or persons essential for the safe operation of the aircraft; and

(ii) Notwithstanding any operating limitation applicable under § 91.9(a) that prohibits the carriage of passengers for compensation or hire, up to two persons enrolled in a LODA training course for the same aircraft may observe the flight training from a forwardmost observer seat with an unobstructed view of the flight deck, provided carriage of those persons is not prohibited by any other regulation.

(6) The Administrator may limit the types of training, testing, and checking authorized under this deviation authority. Training, testing, and checking under this deviation authority must be conducted consistent with the training program submitted for FAA review.

(c) *Operations not requiring a letter of deviation authority.* The following operations may be conducted without a letter of deviation authority.

(1) An authorized instructor, registered owner, lessor, or lessee of an aircraft is not required to obtain a letter of deviation authority from the Administrator to allow, conduct, or receive flight training, checking, or testing in a limited category aircraft, experimental aircraft, or primary category aircraft if—

(i) The authorized instructor is not providing both the training and the aircraft;

(ii) No person advertises or broadly offers the aircraft as available for flight training, checking, or testing; and

(iii) No person receives compensation for the use of the aircraft for any flight during which flight training, checking, or testing was received, other than expenses for owning, operating, and maintaining the aircraft. Compensation for the use of the aircraft for profit is prohibited.

(2) A person may operate a limited category aircraft, experimental aircraft, or primary category aircraft to conduct flight training, checking, or testing without a letter of deviation authority if no person provides and no person receives compensation for the flight training, checking, or testing, or for the use of the aircraft.

(d) *Previously issued letters of deviation authority.* For deviation authority issued under § 91.319 prior to [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], the following requirements apply—

(1) The deviation holder may continue to operate under the letter of deviation authority until December 1, 2026;

(2) The deviation holder must continue to comply with the conditions and limitations in the letter of deviation authority when conducting an operation under the letter of deviation authority in accordance with paragraph (b)(1) of this section;

(3) The letter of deviation authority may be cancelled or amended at any time; and

(4) The letter of deviation authority terminates on December 1, 2026.

18. Amend § 91.327 by revising paragraph (a)(2) to read as follows:

§ 91.327 Aircraft having a special airworthiness certificate in the light-sport category: Operating limitations.

(a) * * *

(2) To conduct flight training, checking, and testing.

* * * * *

Issued under authority provided by 49 U.S.C. 106(f), 44701-44703, sec. 517 of Public Law 115-254, sec. 5604 of Public Law 117-263, and secs. 814, 826, and 923 of Public Law 118-63 in Washington, DC.

Michael Gordon Whitaker,

Administrator.

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