



[4910-13]

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 61 and 121**

[Docket No.: FAA-2017-1106 Notice No. 17-02]

**RIN 2120-AL03**

**Recognition of Pilot in Command Experience in the Military and in Part 121 Air Carrier Operations**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice of proposed rulemaking (NPRM) would allow pilots who obtained pilot in command (PIC) experience prior to July 31, 2013, in certain air carrier operations, to count that time towards the 1,000 hours of air carrier experience required to serve as a PIC in air carrier operations today. This would correct an inadvertent omission in the *Pilot Certification and Qualification Requirements for Air Carrier Operations* final rule that established the air carrier experience requirement. It would also broaden the existing 500-hour credit military pilots of fixed-wing airplanes can use towards the 1,000 hours of air carrier experience by permitting pilots of select powered-lift aircraft operations to receive credit. This NPRM would also allow credit for select military time in a powered-lift aircraft flown in horizontal flight towards the 250 hours of airplane time as PIC, or second in command (SIC) performing the duties of PIC, required for an airline transport pilot (ATP) certificate.

**DATES:** Send comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Send comments identified by docket number FAA-2017-1106 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at 202-493-2251.

*Privacy:* In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

*Docket:* Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground

Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Barbara Adams, Air Transportation Division, AFS-200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8166; e-mail [barbara.adams@faa.gov](mailto:barbara.adams@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Authority for this Rulemaking**

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code (49 U.S.C.). Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules; 49 U.S.C. 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security; and 49 U.S.C. 44703(a), which requires the Administrator to prescribe regulations for the issuance of airman certificates when the Administrator finds, after investigation, that an individual is qualified for, and physically able to perform the duties related to, the position authorized by the certificate. This rulemaking would revise the qualifications required to apply for an airline transport pilot (ATP) certificate and the qualifications required to serve as pilot in command (PIC) in

part 121 operations. For these reasons, this rulemaking is within the scope of the FAA's authority.

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ATP Airline Transport Pilot

PIC Pilot in Command

SIC Second in Command

#### **I. Overview of Proposed Rule**

This rulemaking would provide relief to military pilots of powered-lift aircraft seeking to obtain an airline transport pilot (ATP) certificate with an airplane category rating. As discussed in section II.A. of this preamble, the FAA is proposing to allow military pilots to credit flight time in a powered-lift aircraft operated in horizontal flight towards the 250-hour flight time requirement in an airplane in § 61.159(a)(5). This proposed change would assist military pilots of powered-lift aircraft in qualifying for an ATP certificate in the airplane category.

This rulemaking would also include changes to the 1,000-hour air carrier experience requirement to serve as PIC in part 121 operations. As discussed in section II.B., this rulemaking would allow pilots with part 121 PIC experience acquired prior to July 31, 2013, to count that time towards the 1,000 hours of air carrier experience required to serve as a PIC in part 121 today. Additionally, this rulemaking would broaden the existing 500-hour credit military pilots of fixed-wing airplanes can take towards the 1,000-hour air carrier experience requirement. The proposed change to the existing 500-hour credit would accommodate pilots of multiengine, turbine-powered, powered-lift aircraft in operations where more than one pilot is required.

Because this rulemaking proposes to amend two disparate regulations, the FAA has provided the necessary background information in the relevant sections of the Discussion of the Proposal.

## **II. Discussion of the Proposal**

### *A. ATP Aeronautical Experience Requirements (§ 61.159)*

Since 1969, the FAA has required an applicant for an ATP certificate with an airplane category rating to have at least 1,500 hours of flight time as a pilot. (34 FR 17162). This requirement is found in § 61.159(a). As part of the 1,500 hours of total time required, § 61.159(a)(5) requires the applicant to have at least 250 hours of flight time in an airplane as PIC, or as second in command (SIC) performing the duties of PIC while under the supervision of a PIC, or any combination thereof.<sup>1</sup> The 250 hours of airplane time must include at least 100 hours of cross-country time and 25 hours of night time.<sup>2</sup>

Over the years, military pilots have asked the FAA whether they may credit their flight time in powered-lift aircraft (when operated in horizontal flight) towards the aeronautical experience requirement of § 61.159(a)(5) for an airplane category rating. Section 61.159(a)(5) requires the 250 hours of flight time as PIC (or SIC performing the duties of PIC while under the supervision of a PIC) to be performed in the category of aircraft for which the rating is sought. In 1997, the FAA established a separate category of aircraft for powered-lift aircraft and adopted § 61.163(a),<sup>3</sup> which prescribes the

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<sup>1</sup> See Memorandum to John Duncan from Rebecca MacPherson, Assistant Chief Counsel for Regulations (Apr. 13, 2012)(interpreting the provision of 14 CFR 61.159(a)(4) (2012), which at the time stated “250 hours of flight time in an airplane as pilot in command, or as second in command performing the duties of pilot in command while under the supervision of a pilot in command”).

<sup>2</sup> 14 CFR 61.159(a)(5)(i) and (ii).

<sup>3</sup> When the FAA established the powered-lift category rating, some commenters suggested simply requiring pilots to hold both an airplane category and a rotorcraft category rating to operate powered-lift aircraft.

aeronautical experience required for a powered-lift category rating.<sup>4</sup> Because the FAA established powered-lift as a separate category of aircraft rather than a class or type of airplane, the regulations currently preclude a pilot from crediting flight time in a powered-lift category aircraft towards the airplane-specific aeronautical experience required for an airplane category rating.<sup>5</sup>

In March 2015, the FAA received a petition for exemption to permit a military pilot to credit time in a powered-lift aircraft toward the airplane flight time requirements of § 61.159(a)(5).<sup>6</sup> An additional petition was received in January 2016 seeking the same relief.<sup>7</sup> The FAA has received favorable public comment to the initial petition for exemption from the Air Line Pilots Association, International (ALPA) in a letter dated September 6, 2016.<sup>8</sup> ALPA supported the petitioner's request for relief from § 61.159(a)(5) by citing the August 11, 1995, notice of proposed rulemaking (NPRM) that proposed to create the powered-lift category. (60 FR 41160). ALPA notes that in the preamble to the NPRM, the FAA acknowledged that the requirements for an ATP certificate for powered-lift aircraft would be similar to the airplane requirements. ALPA also pointed to a legal interpretation that was issued by the Assistant Chief Counsel for

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Others suggested that the FAA establish type ratings within an existing category of aircraft for powered-lift aircraft. The FAA chose instead to set powered-lift aircraft apart as a separate category from both airplane and rotorcraft. 62 FR 16220 (Apr. 4, 1997).

<sup>4</sup> Section 61.163(a)(3) requires a person who is applying for an ATP certificate with a powered-lift category rating to obtain the same 250 hours of flight time in a powered-lift aircraft.

<sup>5</sup> In July 2013, the FAA published a final rule that permits military pilots to obtain an ATP certificate with 750 hours total time as a pilot as compared with the 1,500 hours generally required to apply for the certificate. 78 FR 42324 (July 15, 2013).

<sup>6</sup> [www.regulations.gov](http://www.regulations.gov); Docket No. FAA-2015-0695.

<sup>7</sup> [www.regulations.gov](http://www.regulations.gov); Docket No. FAA-2016-2486.

<sup>8</sup> [www.regulations.gov](http://www.regulations.gov); Docket No. FAA-2015-0695

the Regulations Division on January 11, 2016,<sup>9</sup> in which the FAA acknowledged that powered-lift aircraft resemble airplanes in many respects and that they may fly at an airspeed that is consistent with an airplane.

The FAA believes that any relief to § 61.159(a)(5) is most appropriately achieved through notice and comment rulemaking. The FAA notes that a rulemaking change to § 61.159(a)(5) enables the FAA to more generally accommodate military pilots of powered-lift aircraft. Consistent with the types of military pilots who may apply for pilot certificates and ratings under § 61.73, the FAA's proposal accommodates military pilots and former military pilots in the U.S. Armed Forces, and military pilots in the Armed Forces of a foreign contracting State to the Convention on International Civil Aviation provided those foreign military pilots are assigned to pilot duties in the U.S. Armed Forces for purposes other than receiving flight training. In order to credit flight time in accordance with proposed § 61.159(a)(5)(ii), U.S. military pilots and former U.S. military pilots would be required to provide the documentation in accordance with § 61.73(b)(1), and military pilots in the Armed Forces of a foreign contracting State to the Convention on International Civil Aviation would be required to provide the documentation in accordance with § 61.73(c)(1).<sup>10</sup>

The FAA recognizes that powered-lift aircraft are predominantly operated in the horizontal flight regime. When operated in this mode, the FAA finds that powered-lift aircraft are, for all practical purposes, operated as airplanes. As such, the FAA is

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<sup>9</sup> Legal Interpretation to Major Daniel Fiust from Lorelei Peter, Acting Assistant Chief Counsel for Regulations (January 11, 2016)

<sup>10</sup> To facilitate readability, the FAA is hereinafter using the term "military pilots" to refer to military pilots and former military pilots in the U.S. Armed Forces, and military pilots in the Armed Forces of a foreign contracting State to the Convention on International Civil Aviation.

proposing to amend § 61.159(a)(5) to allow military pilots to credit flight time in powered-lift aircraft operated in horizontal flight towards the 250-hour airplane flight time requirement. Accordingly, a military pilot would be allowed to credit flight time obtained in a powered-lift aircraft as PIC (or as SIC performing the duties of PIC while under the supervision of a PIC) towards the aeronautical experience requirement of § 61.159(a)(5). The proposed allowance to credit military time in powered-lift aircraft towards the 250 hours of airplane time would also extend to the cross country time and night time requirements of this paragraph. The FAA proposes to amend current § 61.159(a)(5) by moving current paragraphs (a)(5)(i) and (a)(5)(ii), which contain the cross country time and night time requirements, to new paragraphs (a)(5)(i)(A) and (a)(5)(i)(B) and by adding new § 61.159(a)(5)(ii), which would contain the proposed allowance for military pilots of powered-lift aircraft.

This proposed change would provide relief to military pilots of powered-lift aircraft who are seeking to obtain an ATP certificate with an airplane category rating. The FAA notes that it is not proposing a similar credit towards the aeronautical experience required for an ATP certificate with a rotorcraft rating.

Under proposed § 61.159(a)(5)(ii), a military pilot would be allowed to credit flight time in a powered-lift aircraft as PIC or as SIC performing the duties of PIC (i.e., manipulating the flight controls or serving as the flying pilot) while under the supervision of a PIC. This proposed provision would be consistent with current § 61.159(a)(5) and with the Memorandum to the Air Transportation Division from the Assistant Chief Counsel for Regulations dated April 13, 2012 (Memorandum).<sup>11</sup> Current § 61.159(a)(5)

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<sup>11</sup> Memorandum to John Duncan, Manager, Air Transportation Division, from Rebecca MacPherson, Assistant Chief Counsel for Regulations (Apr. 13, 2012).

states “250 hours of flight time in an airplane as a pilot in command, or as second in command performing the duties of pilot in command while under the supervision of a pilot in command, or any combination thereof[.]”<sup>12</sup> The Memorandum explains that this provision should not be confused with § 61.51(e)(1)(iv), which permits a pilot who holds a commercial pilot certificate or ATP certificate that is appropriate to the category and class of aircraft to log PIC time while performing “the duties of pilot in command under the supervision of a qualified pilot in command” if, among other things, the pilot is undergoing an approved PIC training program. While these two provisions contain similar language regarding the performance of PIC duties under the supervision of a PIC, they are distinct provisions.

As evidenced by the Memorandum, the SIC time that may be credited towards the aeronautical experience requirement of § 61.159(a)(5) is not required to meet the PIC logging requirements of § 61.51(e)(1)(iv). Accordingly, a military pilot may count the SIC time during which he or she performs the duties of PIC under the supervision of a PIC towards the 250 hour flight time requirement of § 61.159(a)(5) even if he or she cannot log that SIC time as PIC time in accordance with § 61.51(e)(1)(iv). The SIC time used to meet § 61.159(a)(5) would instead be logged as SIC time in accordance with

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<sup>12</sup> As stated in the Memorandum, this provision was first introduced in the 1952 Civil Air Regulations. CAR 21.16(a) stated that an applicant for an ATP rating shall have “at least 250 hours of flight time composed of time as pilot in command, or time as copilot actually performing the duties and functions of a pilot-in-command under the surveillance of a pilot in command, or any combination thereof.” The Civil Aeronautics Board explained that “the experience and training gained by copilots on air carrier aircraft together with flight training experience in performing the duties and functions of an aircraft commander in transport type aircraft is equivalent to or greater than the present requirement for pilot-in-command experience which is often attained in small aircraft under conditions entirely unrelated to air carrier operations.” CAB Amendment No. 21-10, Aeronautical Experience Requirement for Airline Transport Pilot Rating.

§ 61.51(f). As such, the SIC must be a required flightcrew member by aircraft certification or the regulation under which the flight is conducted.

The FAA is not proposing to limit the amount of powered-lift time a pilot may credit towards the 250 hours of airplane time other than stating the time credited must have been acquired in horizontal flight. The FAA does not see a safety risk in allowing this credit. A military pilot receives training in an airplane prior to transitioning to a powered-lift aircraft and typically is able to obtain a commercial pilot certificate in the airplane category based on his or her military experience.<sup>13</sup> Furthermore, in order to be eligible for the ATP certificate with airplane category and multiengine class ratings, a military pilot would still be required to meet the other aeronautical experience requirements of § 61.159, including the requirement to obtain at least 50 hours of flight time in a multiengine land airplane. The FAA also notes that while using the military documentation in § 61.73 to credit the time, the military pilot would still be required to complete the training required by § 61.156 for a multiengine airplane ATP certificate, pass the single-engine or multiengine ATP knowledge test, as appropriate, and pass a practical test/evaluation event in the appropriate class of airplane for the desired ATP certificate.<sup>14</sup>

The FAA notes that it is not proposing to make any changes to the ATP flight time requirements. This rulemaking would not reduce the amount of total time as a pilot required for an ATP certificate. Nor would it reduce the amount of total time as a pilot required for an ATP certificate with restricted privileges. Furthermore, the FAA is not

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<sup>13</sup> 14 CFR 61.73

<sup>14</sup> Section 61.159(a)(3) requires at least 50 hours of flight time in the class of airplane for the rating sought.

proposing to reduce the categorical minimum flight times (e.g., instrument time, night time, etc.) required for an ATP certificate.

*B. Minimum of 1,000 Hours in Air Carrier Operations To Serve as Pilot in Command in Part 121 Operations (§ 121.436)*

The Airline Safety and Federal Aviation Administration Extension Act of 2010 (Pub. L. 111- 216, “the Act”), directed the FAA to conduct rulemaking to improve the qualifications and training for pilots serving in air carrier operations. In support of the Act, the FAA published the *Pilot Certification and Qualification Requirements for Air Carrier Operations* final rule on July 15, 2013. (78 FR 42324). The rule created new certification and qualification requirements for pilots in air carrier operations, including § 121.436. Section 121.436 addresses pilot qualifications, certificates, and experience requirements to act as a PIC of an aircraft (or SIC of an aircraft in a flag or supplemental operation that requires three or more pilots).

Specifically, § 121.436(a)(3) requires pilots serving as PIC in part 121 operations to have, in addition to an ATP certificate and an aircraft type rating, at least 1,000 hours of air carrier experience. The air carrier experience may be a combination of time serving as SIC in operations under part 121, or serving as PIC in operations under § 91.1053(a)(2)(i) or § 135.243(a)(1). Section 121.436(c) allows military pilots to credit towards the 1,000-hour air carrier experience requirement 500 hours of military time obtained as PIC of a multiengine, turbine-powered, fixed-wing airplane in an operation requiring more than one pilot. As discussed in the sections below, the FAA is proposing to amend these requirements to provide relief to pilots who obtained part 121 PIC experience prior to July 31, 2013, and to military pilots of powered-lift aircraft.

1. Part 121 Experience Prior to July 31, 2013

As previously stated, § 121.436(a)(3) requires a pilot to have 1,000 hours of air carrier experience prior to serving as PIC in part 121 operations.<sup>15</sup> This section does not apply to pilots employed as PIC in part 121 operations on July 31, 2013.

Under current § 121.436, a pilot may not use any flight time obtained as PIC in part 121 operations prior to July 31, 2013, to satisfy the 1,000-hour air carrier experience requirement of § 121.436(a)(3). As evidenced by a legal interpretation issued by the Assistant Chief Counsel for Regulations on March 7, 2014,<sup>16</sup> experience as a PIC in part 121 operations is addressed by excepting those pilots employed as PIC in part 121 operations on July 31, 2013, from § 121.436(a)(3).

Since the adoption of § 121.436, the FAA has granted petitions for exemption from § 121.436(a)(3) to pilots who had part 121 PIC experience prior to July 31, 2013, but were not employed as a part 121 PIC on July 31, 2013.<sup>17</sup> These exemptions allow pilots to count their previously accrued part 121 PIC time towards the 1,000-hour air carrier experience requirement of § 121.436(a)(3). This allows them to serve as PIC in part 121 operations today and permits the part 119 certificate holder to employ them as PIC.

The FAA is proposing to add new § 121.436(d) to allow a pilot's experience gained as PIC in part 121 operations prior to July 31, 2013, to count towards the 1,000 hours of air carrier experience required by § 121.436(a)(3). Proposed § 121.436(d) would

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<sup>15</sup> The FAA notes that the introductory paragraph in §121.436(a) prohibits a pilot from serving as PIC in an aircraft in part 121 operations and also prohibits a certificate holder from using a pilot as PIC in part 121 operations unless the pilot meets all of the requirements in paragraphs (a)(1) through (3). Accordingly, both pilots and certificate holders are responsible for compliance with §121.436(a).

<sup>16</sup> Legal Interpretation to Mr. Zachary Kelley from Mark W. Bury, Assistant Chief Counsel for Regulations (Mar. 7, 2014).

alleviate the need for pilots to obtain exemptions from current § 121.436(a)(3) in order to receive credit for part 121 PIC experience obtained prior to July 31, 2013. For the reasons discussed below, the FAA finds that proposed § 121.436(d) is consistent with the intent of § 121.436(a)(3).

A PIC in part 121 air carrier operations is expected to possess leadership and command abilities, including aeronautical decision making and the sound judgment necessary to exercise operational control of the flight. The intent of the 1,000-hour air carrier experience requirement in § 121.436(a)(3) is to prevent two pilots in part 121 operations with little or no air carrier experience from being paired together as a flightcrew in line operations. In addition, the intent of this rule is to ensure that pilots obtain at least one full year of relevant air carrier operational experience before assuming the authority and responsibility of a PIC in operations conducted in part 121 operations (78 FR 42355).

In the preamble to the final rule that adopted § 121.436(a)(3), the FAA determined that flight time acquired as a PIC in operations under §§ 91.1053(a)(2)(i) and 135.243(a)(1), and flight time acquired as an SIC in part 121 operations should count towards the 1,000 hour air carrier experience requirement. The FAA explained that operations under § 91.1053(a)(2)(i) or § 135.243(a)(1) require an ATP certificate, are multicrew operations, and generally use turbine aircraft and therefore are the most applicable to part 121 operations. (78 FR 42356).

Consistent with this rationale, the FAA finds that a pilot who has obtained PIC experience in part 121 operations prior to July 31, 2013, has exercised the privileges of

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<sup>17</sup> Exemption No. 13993 (Docket No. FAA-2014-0658); Exemption No. 15473 (FAA-2016-1287); and Exemption No. 17177 (FAA-2016-9249).

an ATP certificate in a position where that certificate is required by rule in the United States, and the operation was in a turbine-powered aircraft in a multicrew environment. Therefore, that time served as a part 121 PIC should count towards the air carrier experience requirement. The FAA notes that all PICs in part 121 operations complete the air carrier's FAA-approved training and qualification program prior to serving as PIC. This training and qualification ensures every PIC is proficient in the air carrier's operations including, but not limited to, standard operating procedures, environments, kinds of operations, operational authorizations and the operation of its aircraft. Accordingly, the FAA finds that allowing PIC time acquired in part 121 operations prior to July 31, 2013, to count towards the air carrier experience requirement would not adversely impact safety; it would support the FAA's goal of ensuring that a pilot possesses sufficient experience to assume the authority and responsibility of PIC in part 121 operations.

## 2. Military Time

In the *Pilot Certification and Qualification Requirements for Air Carrier Operations* final rule, the FAA recognized that many pilots in the course of their military careers will obtain significant multicrew experience as PICs of transport category aircraft. The FAA therefore adopted §121.436(c) to allow 500 hours of military flight time accrued as PIC of a multiengine, turbine-powered, fixed-wing airplane in an operation requiring more than one pilot to be credited towards the 1,000-hour air carrier experience requirement.

Under current § 121.436(c), the creditable military flight time is limited to PIC time acquired in fixed-wing airplanes. Since the adoption of § 121.436(c), the FAA has

received several inquiries and a petition for exemption from a military pilot seeking to credit military flight time as PIC in multicrew, turbine-powered, powered-lift aircraft towards the 1,000-hour air carrier experience requirement. The petitioner explained that “[o]perational complexity is experienced routinely in the V-22, often with passengers of up to twenty-four. In fact, operations in the V-22 are some of the most complex operations pilots will experience due to its flexibility, range and operating altitudes. Additionally, the V-22 is a multi-crew, multi-engine, turbine aircraft.”<sup>18</sup> The petitioner added that the majority of flight time in the V-22 is in ““Airplane Mode” meaning operations are nearly the same as turbine airplane flight time.” The FAA believes that any relief to § 121.436(c) is most appropriately achieved through notice and comment rulemaking. The FAA notes that a rulemaking change to § 121.436(c) enables the FAA to more generally accommodate military pilots of multiengine, turbine-powered, powered-lift aircraft.

The FAA has reconsidered the military flight time that may be credited towards the 1,000-hour air carrier experience requirement. As previously discussed in this preamble, the intent of the 1,000-hour air carrier experience provision is to prevent two pilots in part 121 operations with little or no air carrier experience from being paired together as a flightcrew in line operations and to ensure that pilots obtain at least one full year of relevant air carrier operational experience before assuming the authority and responsibility of a PIC in operations conducted in part 121 operations. Further, a PIC in part 121 air carrier operations is expected to possess leadership and command abilities, including aeronautical decision making and the sound judgment necessary to exercise operational control of the flight. (78 FR42356).

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<sup>18</sup> [www.regulations.gov](http://www.regulations.gov); Docket No. FAA-2016-8875

Upon further reconsideration, the FAA is proposing to amend § 121.436(c) to also allow military flight time accrued as PIC of a multiengine, turbine-powered powered-lift aircraft to be credited towards the 1,000-hour air carrier experience requirement. Consistent with the existing requirement, the operation must also require more than one pilot. The FAA finds that military flight time obtained as PIC of transport category powered-lift aircraft provides significant multicrew experience substantially similar to that obtained in transport category fixed-wing airplanes. The FAA also finds that allowing a military-trained PIC of a multiengine, turbine-powered, powered-lift aircraft to credit up to 500 hours towards the 1,000-hour air carrier experience requirement is consistent with the intent of § 121.436. The FAA has previously recognized the quality of the military training and appreciates the complexity of those kinds of transport-like operations. In addition, the FAA has acknowledged that powered-lift aircraft are predominantly operated in the horizontal flight regime, much like an airplane. The FAA maintains, however, that while there is value in this experience, these pilots operate in a unique system that is different from a part 121 air carrier environment and military pilots would benefit from spending some time serving as a required crewmember in a civilian air carrier operation before upgrading to PIC. This time would prepare them for operating in compliance with the U.S. regulations that govern civil aviation, the air carrier's particular operating specifications, and the airplane's operations manual.

### 3. Miscellaneous Amendments

Current § 121.436(a)(3) excepts from the requirements of paragraph (a)(3) pilots who "are" employed as PIC in part 121 operations on July 31, 2013. Because the date referenced in paragraph (a)(3) has since passed, the FAA is proposing to revise the

statement to except pilots who “were” employed as PIC in part 121 operations on July 31, 2013.

Current §121.436(d) requires compliance with the requirements of § 121.436 by August 1, 2013. This paragraph states, however, that pilots who are employed as SIC in part 121 operations on July 31, 2013, are not required to comply with the type rating requirement in § 121.436(b) until January 1, 2016. Now that § 121.436 is effective with no exceptions, the dates in paragraph (d) are no longer relevant. The FAA is, therefore, proposing to remove current paragraph (d) from § 121.436.<sup>19</sup>

### **III. Regulatory Notices and Analyses**

#### *A. Regulatory Evaluation*

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 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 likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private

sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this Notice of Proposed Rulemaking.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this rule. Due to Executive Order (EO) 13771 requirements the FAA conducted further analysis and determined this rule is expected to be an EO 13771 deregulatory action as the regulatory changes result in cost savings.

While the costs may be minimal to the society, the proposed rule would be relieving both to individuals and corporations. The proposed rule change is composed of two distinct parts: The first part would modify the part 121 air carrier experience requirement to serve as a Pilot in Command (PIC) to allow credit for experience as PIC if a pilot held that position prior to July 31, 2013. Currently such experience does not count towards qualifying to be a PIC without filing for an exemption. This recognition of previous status and qualification for part 121 PIC employment service would relieve the individual pilots, part 121 air carriers that would employ those pilots, and the Federal government of procedural costs for developing, filing, and reviewing petitions for exemption. The cost of an exemption is about \$1,500. The FAA does not know how many pilots would ask for such an exemption in the future. The second part would allow 250 hours of military PIC experience in powered-lift aircraft in horizontal flight to count

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<sup>19</sup> As previously discussed, the FAA is proposing to add a new paragraph (d) to § 121.436.

towards the PIC airplane time required for an ATP certificate in the airplane category. This rule would relieve these military pilots seeking employment at a part 121 air carrier of the offsetting expense for accruing civilian flight time in airplanes to meet the ATP airplane minimum time requirements, which are required in order to serve at a part 121 air carrier. At \$150 an hour per flight hour, the value of 250 flight hours is a cost savings of \$37,500. The FAA requests comments on whether the enactment of counting military powered-lift time towards airplane PIC time would change these pilots' military retirement decisions. The FAA believes the costs are minimal and cost-relieving.

FAA has, therefore, determined that this rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

#### *B. Regulatory Flexibility Determination*

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency

determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

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

The proposed rule would be relieving to pilots interested in part 121 operator employment and not affect small businesses. The rule would count PIC status which occurred prior to July 31, 2013 toward PIC qualifications for part 121 PIC qualification. The rule would also include allowance for counting military powered-lift experience towards part 121 PIC qualifications. As this rule would be relieving to pilots who are not small entities the FAA has determined this rule would not impose a significant economic impact on a substantial number of small entities. While the rule would be relieving the direct impact would be to pilots wanting to work for a Part 121 operator.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the 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 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 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 rule and determined that the rule will have the same impact on international and domestic flights and is a safety rule thus is consistent with the Trade Agreements Act.

*D. Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$155 million in lieu of \$100 million. This rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

*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 determined that there would be no new information collection associated with the proposal to allow a military pilot to use time as a PIC in powered-lift aircraft towards the 250 hours of PIC airplane time required for an ATP certificate. Approval to collect such information previously was approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and was assigned OMB Control Number 2120–0021

The agency is soliciting comments to—

- (1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement to the address listed in the ADDRESSES section at the beginning of this preamble by [\[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER\]](#). Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk

Officer for FAA, New Executive Building, Room 10202, 725 17<sup>th</sup> Street, NW.,  
Washington, DC 20053.

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 no differences with these proposed regulations.

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 in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5-6.6 and involves no extraordinary circumstances.

**IV. Executive Order Determinations**

*A. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs*

Executive Order 13771 titled “Reducing Regulation and Controlling Regulatory Costs,” directs that, unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed. In addition, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs. Only those rules deemed significant

under section 3(f) of Executive Order 12866, “Regulatory Planning and Review,” are subject to these requirements.

This proposed rule is expected to be an EO 13771 deregulatory action. Details on the estimated costs savings of this proposed rule can be found in the rule’s economic analysis.

*B. Executive Order 13132, Federalism*

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

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

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a “significant energy action” under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

*D. Executive Order 13609, International 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 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 would have no effect on international regulatory cooperation.

## **V. Additional Information**

### *A. Comments Invited*

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

### *B. Availability of Rulemaking Documents*

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);

2. Visiting the FAA's Regulations and Policies web page at [http://www.faa.gov/regulations\\_policies](http://www.faa.gov/regulations_policies) or
3. Accessing the Government Printing Office's web page at <http://www.gpo.gov/fdsys/>.

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) 267-9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

### **List of Subjects**

#### 14 CFR Part 61

Aircraft, Airmen, Aviation safety.

#### 14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety.

### **The Proposed Amendment**

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

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

1. The authority citation for part 61 is revised 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, Pub. L. 111-216, 124 Stat. 2348 (49 U.S.C. 44701 note).

2. In § 61.159, revise paragraph (a)(5) to read as follows:

**§ 61.159 Aeronautical experience: Airplane category rating.**

(a) \* \* \*

(5) 250 hours of flight time in an airplane as a pilot in command, or as second in command performing the duties of pilot in command while under the supervision of a pilot in command, or any combination thereof, subject to the following:

(i) The flight time requirement must include at least—

(A) 100 hours of cross-country flight time; and

(B) 25 hours of night flight time.

(ii) Except for a person who has been removed from flying status for lack of proficiency or because of a disciplinary action involving aircraft operations, a U.S. military pilot or former U.S. military pilot who meets the requirements of § 61.73(b)(1), or a military pilot in the Armed Forces of a foreign contracting State to the Convention on International Civil Aviation who meets the requirements of § 61.73(c)(1), may credit flight time in a powered-lift aircraft operated in horizontal flight toward the flight time requirement.

\* \* \* \* \*

**PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND  
SUPPLEMENTAL OPERATIONS**

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

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40113, 40119, 41706, 42301 preceding note added by Pub. L. 112-95, sec. 412, 126 Stat. 89, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44729, 44732; 46105; Pub. L. 111-216, 124 Stat. 2348 (49 U.S.C. 44701 note); Pub. L. 112-95 126 Stat 62 (49 U.S.C. 44732 note).

4. In § 121.436, revise paragraphs (a)(3), (c), and (d) to read as follows:

**§ 121.436 Pilot Qualification: Certificates and experience requirements.**

(a) \* \* \*

(3) If serving as pilot in command in part 121 operations, has 1,000 hours as second in command in operations under this part, pilot in command in operations under §91.1053(a)(2)(i) of this chapter, pilot in command in operations under §135.243(a)(1) of this chapter, or any combination thereof. For those pilots who were employed as pilot in command in part 121 operations on July 31, 2013, compliance with the requirements of this paragraph (a)(3) is not required.

\* \* \* \* \*

(c) For the purpose of satisfying the flight hour requirement in paragraph (a)(3) of this section, a pilot may credit 500 hours of military flight time provided the flight time was obtained--

(1) As pilot in command in a multiengine, turbine-powered, fixed-wing airplane or powered-lift aircraft, or any combination thereof; and

(2) In an operation requiring more than one pilot.

(d) For the purpose of satisfying the flight hour requirement in paragraph (a)(3) of this section, a pilot may credit flight time obtained as pilot in command in operations under this part prior to July 31, 2013.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on November 9, 2017.

John Barbagallo

Executive Deputy Director, Flight Standards Service

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