

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 91**

[Docket No.: FAA–2023–0290]

**Notification of Policy for Implementation of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 for Flight Training, Checking, and Testing in Experimental Aircraft**

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

**ACTION:** Notification of policy.

**SUMMARY:** This notification provides information on flight training, checking, and testing for compensation in aircraft that hold experimental airworthiness certificates in compliance with the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (the Act), which was signed by President Joseph R. Biden on December 23, 2022. This notification provides sample scenarios to illustrate when a letter of deviation authority (LODA) is required and scenarios when a LODA is not required.

**DATES:** The policy described herein is effective February 8, 2023.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this policy notification, contact Erin Cappel, General Aviation and Commercial Division, General Aviation Operations Section, (202) 267–1100, or email [9-AFS-800-Correspondence@faa.gov](mailto:9-AFS-800-Correspondence@faa.gov), 800 Independence Ave. SW, Washington, DC 20591.

**SUPPLEMENTARY INFORMATION:** President Joseph R. Biden signed the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (the Act) (Pub. L. 117–263) on December 23, 2022. Section 5604 of the Act mandates self-enacting provisions related to flight training, checking, and testing in experimental aircraft. The Act states that flight instructors, registered owners, lessors, or lessees of an experimental aircraft shall not be required to obtain a letter of deviation authority (LODA) to allow, conduct, or receive flight training, checking, and testing in experimental aircraft, if:

(1) The flight instructor is not providing both the training and the aircraft;

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

(3) 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.

The Act provides relief from the § 91.319(h) LODA requirement for certain persons who wish to receive training, checking, or testing in an experimental aircraft. Likewise, the Act supersedes the 2021 FAA Notification of Policy requiring owners and flight instructors in certain circumstances to obtain a LODA through a streamlined process.<sup>1</sup> The Act does not enable persons to broadly offer flight training in these aircraft (e.g., advertising online or by word of mouth). Likewise, the Act limits the amount of compensation for use of the aircraft for a particular flight to only expenses for owning, operating, and maintaining the aircraft related to that training, checking, or testing flight.

The instructor providing the training may receive compensation for their services but may not provide the aircraft. Persons who wish to broadly offer flight training, testing, or checking in experimental aircraft, or who seek financial gain for provision of an aircraft for those services, will still be required to obtain a LODA (FAA Order 8900.1, Volume 3, Chapter 11, Section 1).

**Sample Scenarios**

The FAA provides the following flight training scenarios to provide greater clarity on the impact of section 5604 of the Act and the situations in which a LODA is still required.

*Scenario A:* An experimental aircraft owner wishes to hire a flight instructor to receive flight training in the owner's own aircraft. The owner intends to pay the flight instructor for the instruction. This operation is permissible under the Act without a LODA.

*Scenario B:* An experimental aircraft owner seeks to provide flight training in their aircraft to others. This owner (or a person or entity action on their behalf) is willing to allow almost anyone who comes to receive flight training in the owner's aircraft, provided the person receiving training pays a fee. The owner advertises flight training on a website and/or offers these training flights to attendees at various air shows. This operation is not permissible under the Act and would continue to require a LODA.

*Scenario C:* Four people co-own an experimental aircraft as part of a flying club. One of these people needs to get a flight review in the aircraft, so that person hires a flight instructor and pays the instructor for the training, plus pays a pre-arranged hourly rate that covers

fuel used during the flight, as well as ongoing maintenance costs. Each co-owner pays the same hourly rate as a part of a co-ownership contract. Members of the flying club do not expect monetary gain or profit, but rather the fee is in place to cover the costs of owning, operating, and maintaining the aircraft. This scenario is permissible under the Act without a LODA.

*Scenario D:* An owner of an experimental aircraft starts a flying club and advertises to gain flying club members. This person charges a fee for “club membership,” and club members are given a flight training flight or series of flights in return. This fee yields a profit for the owner in excess of the compensation permissible under the Act. This operation includes broadly offered flight training, as well as an operator offering both the aircraft and the instructor. This operation is not permissible under the Act and would continue to require a LODA. Depending on the circumstances, this operation may also require some other kind of authorization from the Administrator, such as an air carrier or commercial operator certificate, or a commercial air tour letter of authorization.

**Effect of Legislation on Streamlined LODA Process**

As noted in the July 2021 **Federal Register** notification, the FAA has long emphasized the importance of pilots being trained and checked in the aircraft they will operate. Specifically, the FAA underscored that it is critical that pilots understand and are familiar with the particular systems, procedures, operating characteristics, and limitations of the aircraft they will operate. This flight training is distinct from a situation where an aircraft with a special airworthiness certificate is “held out” broadly for training to individuals who pay for both the flight training and use of an aircraft that they will not have further access to upon completion of LODA training. It is also distinct from the broadly offered basic flight training that can be accomplished effectively and safely in any standard category aircraft.

In the July 2021 **Federal Register** notification, the FAA established a streamlined process that allowed owners and flight instructors to apply for a LODA through an expedited process and accomplish certain flight training in experimental aircraft. Through this expedited process, the FAA was able to promote flight training for owners and those affiliated with the owners of experimental aircraft without overburdening the segment of the

<sup>1</sup> 86 FR 36493 (July 12, 2021).

regulated community. The FAA maintained the more rigorous LODA process for flight training broadly offered to the public. With the passage of section 5604 of the Act, this streamlined LODA process is no longer necessary. The FAA will cease processing LODAs through this process. In addition, the FAA considers LODAs issued under this process to be terminated.<sup>2</sup> Henceforth, the requirements of section 5604 will govern the flight training, checking, and testing that can be accomplished in experimental aircraft without a LODA. Flight training, checking, and testing that is broadly offered to the public, or that does not conform to the stipulations of the Act will continue to require a LODA.

Issued in Washington, DC, on February 2, 2023.

**Wesley L. Mooty,**

*Acting Executive Director, Flight Standards Service.*

[FR Doc. 2023–02600 Filed 2–3–23; 8:45 am]

**BILLING CODE 4910–13–P**

## FEDERAL TRADE COMMISSION

### 16 CFR Parts 801 and 803

**RIN 3084–AB46**

#### Premerger Notification; Reporting and Waiting Period Requirements

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The Federal Trade Commission (“Commission”) published a document in the **Federal Register** of January 30, 2023, concerning the Hart-Scott-Rodino (“HSR”) Premerger Notification Rules (“Rules”). Pending publication, Commission staff learned the document did not include certain explanatory language pursuant to the Administrative Procedure Act. The Commission is issuing this correction to incorporate this language.

**DATES:** Effective February 27, 2023.

#### FOR FURTHER INFORMATION CONTACT:

Robert Jones, Assistant Director, Premerger Notification Office, Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Room CC–5301, Washington, DC 20024, or by telephone at (202) 326–3100, Email: [rjones@ftc.gov](mailto:rjones@ftc.gov).

**SUPPLEMENTARY INFORMATION:** The Commission is correcting its regulations

published in the final rule “Premerger Notification; Reporting and Waiting Period Requirements” on January 30, 2023.

In FR Rule Doc. No. 2023–01584, appearing on page 5748 in the **Federal Register** issue of Monday, January 30, 2023, the following correction is made:

1. In the **SUPPLEMENTARY INFORMATION** section, on page 5749, in the third column, add the following language after the fourth paragraph of section V. Administrative Procedure Act:

\* \* \* \* \*

Separately, the Commission finds that there is good cause under 5 U.S.C. 553(d)(3) for this final rule to become effective on February 27, 2023. Section 553(d)(3) of the APA allows an effective date of less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.” 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This final rule conforms with the new fee tiers and fees enacted by Congress on December 29, 2022—more than 30 days ago. In addition, the public interest is served by having the effective date of this final rule be the same as the effective date announced in the notice of revised jurisdictional thresholds published at 88 FR 5004, and thereby avoiding confusion about the relevant effective date.

\* \* \* \* \*

Dated: February 2, 2023.

**April J. Tabor,**

*Secretary.*

[FR Doc. 2023–02590 Filed 2–7–23; 8:45 am]

**BILLING CODE 6750–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

**[Docket Number USCG–2023–0130]**

**RIN 1625–AA87**

#### Security Zone; Atlantic Ocean; Surfside Beach, South Carolina

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone for certain navigable waters of the Atlantic Ocean near or in the vicinity of

Surfside Beach, South Carolina. The temporary security zone is needed to protect the public, persons, vessels, and the marine environment from potential hazards created by physical objects in the subject navigable waters. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Charleston, or designated representative.

**DATES:** This rule is effective without actual notice from February 6, 2023, through February 18, 2023. For the purposes of enforcement, actual notice will be used from February 4, 2023, through February 6, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0130 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email the Sector Charleston Command Center, U.S. Coast Guard, Telephone: 843–740–7050, email: [d05-smb-d5cc@uscg.mil](mailto:d05-smb-d5cc@uscg.mil) and [RCCMiami@uscg.mil](mailto:RCCMiami@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

COTP Captain of the Port  
CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code

##### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. It is impracticable because immediate action is required, and we lack sufficient time to collect and address public comments before the effective date of this rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30

<sup>2</sup> The FAA notes that section 5604 addressed only experimental aircraft. The July 2021 policy pertaining to exemption relief remains valid for limited category and primary category aircraft.