

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Docket No. 5099; Amdt. 61-19]

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

Clarification of Status of FAA Inspectors or Other Authorized Flight Examiners

The purpose of this amendment is to clarify the status of an FAA inspector or other authorized flight examiner conducting a flight test aboard an aircraft. Under this amendment he is not considered to be pilot in command of the aircraft while conducting a flight test unless he acts in that capacity by prior arrangement with the applicant (or other person who would otherwise be pilot in command of the flight).

The substance of this action was proposed in Notice No. 64-33 (29 F.R. 7150) issued May 26, 1964. As explained in the notice, the need for clarification arose out of the improper application, to an inspector or examiner conducting a flight test, of the concept "pilot in command", in an effort to avoid the passenger limitations of the regulations.

Many comments were received in response to the notice. Generally, they supported the objective of clarification, but were in conflict as to what the status of the inspector or examiner should be. As to the status, some comments urged that in the case of nonair carrier aircraft, the inspector or examiner should always be pilot in command, while others urged that in the case of air carrier aircraft the inspector or examiner should never be the pilot in command. Even if the inspector or examiner is not the pilot in command, as proposed in the notice, some comments indicated that it was contradictory to state that he could assume that capacity at any time by taking over the controls or exercising authority over the applicant by direct command.

Many of the comments urging that the inspector or examiner should always be the pilot in command were based upon the opinion that an unrated pilot is not qualified to be the pilot in command. The Agency does not agree with this position. As stated in the notice, the duty of the inspector or examiner during the flight test is to observe, for the Administrator, the competence of the applicant to perform the airman

functions authorized by the certificate or rating sought. Part 61 prescribes appropriate experience standards, including dual instruction and solo flight, that must be accomplished prior to the flight test for a particular airman certificate and rating. Moreover, during the solo flights the applicant is for all purposes the pilot in command of the aircraft. Although he is not authorized to carry passengers without the certificate or rating for which the flight test is conducted, he is qualified to be the pilot in command of the aircraft during solo flights. Therefore, to make the inspector or examiner the pilot in command during a flight test to avoid a passenger carrying prohibition or responsibility is unnecessary and defeats the purpose of the test. In addition, under amendments to Part 61 proposed by Notice No. 64-18, endorsement by the flight instructor of the applicant's readiness to take the flight test would be required in certain cases prior to the flight test.

Those comments urging that, in the case of air carrier aircraft, the inspector or examiner should never be the pilot in command, were based upon a belief that the duties of the inspector or examiner while conducting a flight test do not require him to be the pilot in command. The comments from the associations for both the airlines and the airline pilots point out that certification or rating checks for air carrier pilots are usually conducted with the FAA inspector acting in the capacity of an observer while seated in the jump seat, and the company pilot or check pilot acting as the pilot in command while seated at one of the pilot stations. This practice, it is contended, could not be continued if the inspector may become the pilot in command at such time as he "assumes control of its operation by taking command of the controls or by exercising authority over the applicant by direct command." Comments from other persons directed to this provision expressed a belief that it conflicts with § 91.3(a) of the Federal Aviation Regulations, which provides that the pilot in command is "directly responsible for, and is the final authority as to, the operation of the aircraft". It was contended that if the inspector or examiner can take command at any time, the inspector or examiner has the final authority as to the operation of the aircraft and would be the pilot in command whether he assumes control of the aircraft or not.

This provision of the proposed amendment was intended to indicate the circumstances under which the inspector or examiner could be considered as the pilot in command of a particular flight or por-

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tion thereof. It was not intended to place in the inspector or examiner authority to supersede the authority of the applicant or other person who would otherwise be the pilot in command of the flight. However, after further consideration of these comments, it appears that the language of the proposal should be changed to preclude a misunderstanding of the proposed provision. Therefore, the amendment as adopted herein unequivocally states that during the flight test the inspector or examiner does not serve as pilot in command of the flight, or any portion thereof, unless by prior arrangement with the applicant or other person who would otherwise be pilot in command of the flight. In a situation where life or property is endangered during the flight, the inspector or examiner will, of course, give advice to the applicant, or assist the applicant in the manipulation of the flight controls if he is seated at a pilot station of the aircraft. However, the amended language makes it clear that giving this advice or other assistance to the applicant does not in itself change the status of the inspector or examiner to that of the pilot in command. This change in language will allow continuance of the present air carrier practices, and preclude any misunderstanding as to the intent of the rule.

The last sentence of the proposed section met with no objection. However, it appears that it did not take into account a situation in which an authorized observer is aboard as required by § 91.21 to supplement the safety pilot's vision during an instrument test under simulated instrument conditions. As issued, therefore, this provision has been expanded to remove the passenger limitations of the regulations from not only the FAA inspector or other authorized flight examiner but also from other occupants, such as that named, authorized by the examiner.

Interested persons have been afforded an opportunity to participate in the making of this amendment, and due consideration has been given to all matter presented.

Paragraph (a) of § 61.27, as a recodification of § 20.13 of Part 20 of the Civil Air Regulations inadvertently omitted a clear indication that an applicant for

a certificate or rating under Part 61 (other than an airline transport or lighter-than-air pilot certificate or rating) who fails a written test may apply, in the alternative, (1) after 30 days or (2) upon presenting a statement of readiness from the specified ground or flight instructor. Prior to recodification, these requirements were in the alternative, as evidenced by § 20.13, and this is now implemented by the addition of the word "or" in paragraph (a)(1) of § 61.27 to clearly indicate this intention.

In consideration of the foregoing, Part 61 of the Federal Aviation Regulations is amended, effective September 1, 1965, as follows:

1. By adding a new § 61.26 to read as follows:

§ 61.26 Flight tests; status of FAA inspectors and other authorized flight examiners.

An FAA inspector or other authorized flight examiner conducts the flight test of an applicant for a pilot certificate or rating for the purpose of observing the applicant's ability to perform satisfactorily the procedures and maneuvers on the flight test. The inspector or other examiner is not pilot in command of the aircraft during the flight test unless he acts in that capacity for the flight, or portion of the flight, by prior arrangement with the applicant or other person who would otherwise act as pilot in command of the flight, or portion of the flight. Notwithstanding the type of aircraft used during a flight test, the applicant and the inspector or other examiner are not, with respect to each other (or other occupants authorized by the inspector or other examiner), subject to the requirements or limitations for the carriage of passengers specified in this chapter.

2. By adding the word "or" at the end of paragraph (a)(1) of § 61.27.

(Secs. 313(a), 601, and 602 of the Federal Aviation Act of 1958; 49 U.S.C. 1354, 1421, 1422)

Issued in Washington, D.C., on June 28, 1965.

N. E. HALÁBY,
Administrator.