JUN 2 4 1991

Mr. Glenn H. Rizner
Technical/Airports Specialist
Aircraft Owners and Pilots Association 421
Aviation Way
Frederick, MD 21701-4798

Dear Mr. Rizner:

This is in response to your letter of November 5, 1990, concerning an interpretation of Section 91.109(b)(1) of the Federal Aviation Regulations (FAR). We apologize for the delay in responding to you. Your question is set forth below and is followed by our interpretation of the FAR.

Question:

Your question, in pertinent part, states:

> Does an appropriately rated safety pilot have to have a high performance sign-off prior to acting as second in command (safety pilot) in a high-performance airplane? (For example: a Piper Arrow or a Cessna Cutlass)
>
> Since an endorsement is not a rating, the private pilot in our scenario, acting as second in command, appears to hold the appropriate category and class ratings. Therefore, he would be able to act as safety pilot without a high performance endorsement.
>
> Again, since our pilot is acting as second in command, a review of the regulation would support the fact that he does not need the high performance endorsement.
>
> To verify this, I spoke with [the FAA] ... and was told, although the safety pilot is acting as second in command, "he must be capable of taking over and acting as pilot in command in case of potential hazards during the flight".
>
> We do not believe the FARs support this position and therefore would like to request a written interpretation in order to formally clarify this issue.

Answer:

Section 1.1 states, in pertinent part, that:

> "Category":
>
> (1) As used with respect to the certification, ratings, privileges, and limitations of airmen, means a broad

classification of aircraft. Examples include: airplane; rotorcraft; glider; and lighter-than-air;

"Class"
(1) As used with respect to the certification, ratings, privileges, and limitations of airmen, means a classification of aircraft with a category having similar operating characteristics. Examples include: single engine; multiengine; land; water; gyroplane; helicopter; airship; and free balloon; ...

Section 91.109(b) states, in pertinent part, that:

No person may operate a civil aircraft in simulated instrument flight unless -

(1) The other control seat is occupied by a safety pilot who possesses at least a private pilot certificate with category and class ratings appropriate to the aircraft being flown.

Section 61.31(e) states, in pertinent part, that:

High performance airplanes. A person holding a private or commercial pilot certificate may not act as pilot in command of an airplane that has more than 200 horsepower, or that has a retractable landing gear, flaps, and a controllable propeller, unless he has received flight instruction from an authorized flight instructor who has certified in his logbook that he is competent to pilot an airplane that has more than 200 horsepower, or that has a retractable landing gear, flaps, and a controllable propeller, as the case may be.

A fundamental principle of statutory construction is that when language is clear and unambiguous it must be held to mean what it plainly expresses. Applying the meaning of the words "category" and "class" as defined in Part 1 of the FAR to Section 91.109(b)(1), a safety pilot would need at least a private pilot certificate with category (i.e., a broad classification of aircraft, e.g., airplane) and class (i.e., aircraft with a category having similar operating characteristics, e.g., single engine) ratings appropriate to the aircraft being flown.

Another principle of statutory construction is that all parts of the statute (i.e., preamble language) should be given equal weight. The preamble language to Amendment 91-36, 32 Federal Register 260, January 11, 1967, discussed Section 91.109(a)(2), which in 1967 was numbered as 91.21(b). Like Section 91.109(b), Section 91.109(a) (2) uses the terms category and class in stating that "The person manipulating the controls has at least a private pilot certificate with appropriate category and class ratings." That preamble language states that "[Under present § 91.21(b), for simulated instrument flight an 'appropriately rated pilot' must occupy the other control seat as safety pilot. Section 91.21(b) has been interpreted to require a private pilot certificate with

an airplane category rating and multiengine class rating for a small multiengine land plane, and a type rating for a large airplane or for a turbojet powered airplane (large or small)."

Therefore, regarding your question, our opinion is that the safety pilot would need only a private pilot certificate with an airplane category and single engine land class ratings.

While our opinion is that there is no regulatory requirement that a safety pilot have a high performance endorsement to act as safety pilot, we are advised by the General Aviation & Commercial Division of the Flight Standards Service that they have always encouraged those pilots who act as safety pilots to be thoroughly familiar and current in the aircraft that is used. We are also advised by the General Aviation and Commercial Division that the FAA is currently in the process of reviewing the appropriate parts of the FAR to determine, among other things, if a safety pilot should be required to have a high performance endorsement.

This interpretation has been prepared by David Metzbower, Staff Attorney, Operations Law Branch, Regulations and Enforcement Division; Richard C. Beitel, Manager.

This interpretation has been coordinated with the Manager, General Aviation and Commercial Division, Flight Standards Service.

We hope this satisfactorily answers your question. Sincerely,

Donald P. Byrne
Assistant Chief Counsel
Regulations and Enforcement Division