U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

**800 Independence Ave., S.W.
Washington, D.C. 20591**

NOV 16 2016

Caroline Olson
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Re: Clarification of 14 C.F.R. part 61

Dear Ms. Olson:

This is in response to your letter dated June 23, 2016, in which you sought clarification of 14 C.F.R. part 61.

In your letter, you explained that CTC Aviation administers EASA flight training to EASA students in N-registered aircraft in U.S. airspace.[1] The flights are conducted under part 61 and the EASA students hold FAA student pilot certificates. The EASA certificated examiner administers an EASA multi-engine commercial pilot flight test to the EASA student holding an FAA student pilot certificate at the end of the student's training before he or she returns to the United Kingdom. You explained that CTC Aviation has an EASA examiner who holds an FAA airline transport pilot certificate and another possible EASA examiner who holds only an FAA private pilot certificate. You asked whether the EASA examiner must hold more than an FAA private pilot certificate.

Given the definitions of "examiner" and "practical test" in § 61.1,[2] for purposes of part 61, the EASA examiner is not an "examiner" and the EASA multi-engine commercial pilot test is not a "practical test." Therefore, the regulations applicable to "examiners" and "practical tests" do not apply to the flight in question. The FAA views the flight in question as an operation for compensation or hire.

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[1] An N-registered aircraft is a civil aircraft of the United States.

[2] Section 61.1 defines "examiner" as any person who is authorized by the Administrator to conduct a pilot proficiency test or a practical test for an airman certificate or rating issued under this part, or a person who is authorized to conduct a knowledge test under this part. Section 61.1 defines "practical test" as a test on the areas of operations for an airman certificate, rating, or authorization that is conducted by having the applicant respond to questions and demonstrate maneuvers in flight, in a flight simulator, or in a flight training device.

In order to serve as a required pilot flight crewmember of a civil aircraft of the United States, a person must have in the person's physical possession or readily accessible in the aircraft a pilot certificate issued under part 61 and in accordance with § 61.19 and the appropriate medical certificate issued under part 67. 14 C.F.R. § 61.3. Section 61.89 prohibits a student pilot from acting as pilot in command (PIC) of an aircraft that is carrying a passenger,[3] and § 61.113 prohibits a person who holds a private pilot certificate from acting as PIC of an aircraft for compensation or hire. However, a person who holds a commercial pilot certificate may act as PIC of an aircraft for compensation or hire, provided the person is qualified in accordance with part 61 and with the applicable parts of 14 C.F.R. that apply to the operation. 14 C.F.R. § 61.133(a). Section 61.23(a)(2) requires a person to hold at least a second class medical certificate when exercising privileges of a commercial pilot certificate.

Because the flight test is being given in an N-registered aircraft, the EASA examiner must have a pilot certificate issued under part 61 and a medical certificate issued under part 67. Additionally, the EASA examiner must serve as PIC because the student pilot may not act as PIC of an aircraft that is carrying a passenger. In order to act as PIC for compensation or hire, the EASA examiner must have a commercial pilot certificate. Furthermore, because the EASA examiner would be exercising privileges of a commercial pilot certificate, the EASA examiner must hold at least a second class medical certificate.[4] Therefore, in order to administer the EASA flight test in an N-registered aircraft in U.S. airspace to a student pilot who holds only an FAA student pilot certificate, the EASA examiner must hold a commercial pilot certificate and at least a second class medical certificate.

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Katie Patrick, Attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the General Aviation and Commercial Division of the Flight Standards Service.

Sincerely,

Lorelei Peter
Assistant Chief Counsel for Regulations

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[3] As noted, because the EASA examiner is not an examiner as defined by regulation, § 61.47(c)—which excepts applicants and examiners from the regulations and limits for carriage of passengers—does not apply here.

[4] The FAA acknowledges that § 61.23(a)(3)(vii) allows FAA examiners to hold at least a third-class medical certificate when performing the duties as an Examiner in an aircraft when administering a practical test or proficiency check for an airman certificate, rating, or authorization. However, because an EASA examiner is not authorized by the Administrator to conduct a practical test for an airman certificate or rating issued under part 61, the EASA examiner is not an "examiner" as defined in § 61.1. Accordingly, § 61.23(a)(3)(vii) does not apply.

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23rd June 2016

Dear Mr Govan,

I am the Chief Flight Instructor for CTC Aviation, Goodyear, Phoenix. I recently spoke to a member of our Scottsdale FSDO – Jeremy Grogan regarding a question we had, and he suggested I contact the FAA Legal Department to get an answer.

CTC Aviation (US) carries out EASA flight training for EASA students. We operate under Part 61, endorsing the students for solo flight under the requirements of Part 61. Our EASA students, however, never obtain an FAA certificate (other than Student Pilot Certificate). They carry out an EASA Multi-Engine Commercial Pilot flight test with an EASA certificated Examiner at the end of their training here, prior to returning to the UK.

Our question is whether the EASA Examiner requires more than an FAA PPL in order to conduct this flight test? We presently have two EASA Examiners who are dual rated, having both FAA and EASA instructor ratings, who carry out EASA flight tests with no concerns. The question is regarding one additional Examiner who has only an FAA ATP, (no FAA instructor ratings) and another possible Examiner who only has an FAA PPL.

Would the latter two Examiners be able to carry out the EASA fight tests in an N registered aircraft, in US airspace, with students who only have an FAA Student Pilot Certificate?

Would it make any difference whether the foreign Examiner was employed by CTC full time, or contracted? This question has been raised in reference to requiring a minimum of Commercial Pilot License since the Examiner may be viewed as being compensated for the flight?

I look forward to hearing back from you and receiving some clarification on the situation, as the Scottsdale FSDO was unable to give a definitive answer, hence the varying opinions on the topic.

Yours sincerely,

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EASA Chief Flight Instructor

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