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January 18, 2022

Docket Operations, M-30
U.S. Department of Transportation
1200 New Jersey Avenue SE
Room W12-140, West Building Ground Floor
Washington, DC 20590-0001

Re: Docket Number FAA-2021-1040; *Proposed Rule for Medical Certification Standards for Commercial Balloon Operations*

The Aircraft Owners and Pilots Association (AOPA) is the world's largest aviation membership association representing pilots, aircraft owners, and aviation enthusiasts. AOPA serves its membership through advocacy and promotion of the safety and fun in general aviation flying, and respectfully submits this comment on behalf of its more than 300,000 members in response to the proposed rule for medical certification standards for commercial balloon operations and miscellaneous amendments.

Background

On November 28, 2021, the FAA proposed a rule requiring a valid second-class medical certificate when exercising the privileges of a commercial pilot certificate in a balloon for compensation or hire, except when conducting flight training in a balloon.¹ The FAA also proposed amendments to reduce confusion and burdens for persons operating under BasicMed and persons obtaining medical flight tests.²

AOPA has long supported medical reform that creates positive impacts to the general aviation community, reduces unnecessary burdens, and increases safety through opportunities to remain proficient and current.³ AOPA appreciates the FAA's efforts to support these goals by proposing small but impactful changes to allow individuals to gain valuable experience and proficiency, and for individuals seeking a special issuance or SODA to complete their medical flight test safely.

A. AOPA strongly supports the proposed amendments to 61.3(c)(2), 61.23(c)(3), 61.113(i), 68.3, and 68.9 to allow persons who operate under BasicMed to serve as a required pilot flightcrew member when not acting as PIC

Since its inception in 2017, BasicMed has become widely popular and used by many in the aviation community. Since BasicMed became available in 2017, over 70,000 pilots have taken

¹ 86 Fed. Reg. 64419 (November 18, 2021)

² *Id.*

³ <https://www.aopa.org/news-and-media/all-news/2021/july/19/basicmed-five-years-of-safety-efficiency-growth>

advantage of this medical reform all while maintaining an excellent safety record according to FAA's Civil Aerospace Medical Institute and AOPA's Air Safety Institute.⁴

However, while BasicMed includes the privilege to operate an aircraft as PIC,⁵ it does not allow the privilege to operate an aircraft as a required pilot flightcrew member when not acting as PIC. These current regulatory provisions are seemingly inexplicable as a pilot who can legally operate an aircraft as PIC under BasicMed, cannot operate the same aircraft as a required pilot flightcrew member when not acting as PIC. An individual desiring to serve as a safety pilot being the best example.

The FAA now recognizes and proposes to alleviate this issue. In a footnote, the FAA found statutory evidence that "the provision creating BasicMed was not intended to be limited to only persons acting as PIC."⁶ AOPA strongly agrees. In addition, 14 CFR 61.3, Requirement for certificates, ratings, and authorizations, states, in part:

(c) Medical certificate. (1) A person may serve as a required pilot flight crewmember of an aircraft only if that person holds the appropriate medical certificate issued under part 67 of this chapter, **or other documentation acceptable to the FAA**, that is in that person's physical possession or readily accessible in the aircraft. Paragraph (c)(2) of this section provides certain exceptions to the requirement to hold a medical certificate (emphasis added).

AOPA believes BasicMed can, and should, serve as "other documentation acceptable to the FAA" to allow individuals to operate as a required pilot flightcrew member of an aircraft.

AOPA is also aware of at least one petition to the FAA's Office of the Chief Counsel in 2019 to publish a legal interpretation to determine individuals operating under BasicMed can serve as a required pilot flightcrew member (i.e., safety pilot). This, along with many individual comments AOPA has received from its membership, shows this has been an issue in need of correction for some time.

In addition, AOPA has heard from many in the pilot community regarding how valuable and helpful it would be to have the expanded privilege as a required pilot flightcrew member when not acting as PIC. With nearly 50,000 pilots currently exercising BasicMed privileges today, these individuals could easily serve as a safety pilot for any of the 316,000 instrument rated pilots,⁷ not including the unknown number of applicants-in-training. Opportunities like this will provide benefits for both the BasicMed safety pilot and the instrument pilot through increased opportunities for training (e.g., simulated instrument flying), proficiency, and experience at little to no cost. These benefits can all be realized with no increase in risk to the public as the FAA could "not detect a significant overall difference in aviation safety outcomes," such as accident rates between BasicMed pilots and pilots holding third-class medical certificates.⁸

⁴ <https://www.aopa.org/news-and-media/all-news/2021/july/19/basicmed-five-years-of-safety-efficiency-growth>

⁵ E.g., 14 CFR 61.113

⁶ 86 FR 64419 (November 18, 2021)

⁷ https://www.faa.gov/data_research/aviation_data_statistics/civil_airmen_statistics/

⁸ https://www.faa.gov/data_research/research/med_humanfacs/oamtechreports/2020s/media/202118.pdf

B. AOPA strongly supports the proposed amendments to 61.3(c)(2) and 61.23(b) to allow persons to receive medical flight tests authorized under part 67 without holding a medical certificate

Currently, individuals who must complete a medical flight test cannot act as PIC in aircraft (for which a medical certificate is required) because they do not hold a medical certificate.⁹ As the FAA notes, this places an unintentional burden on the ASI because they would need to assume the duties of PIC.

To resolve this burden, the FAA is proposing to allow applicants to act as PIC during these medical flight tests without holding a medical certificate. AOPA strongly supports this proposed change. In addition to relieving the burden of an ASI to act as PIC during a medical flight test, it will also reduce the time and cost of finding and scheduling an evaluation flight with a willing ASI.

As the FAA mentions, the risk to the public is appropriately mitigated because of current policy requiring an ASI to hold a valid medical regardless of acting as PIC, and the applicant requiring a medical evaluation prior to obtaining the medical flight test.

C. AOPA recommends the FAA propose amendments that allow FAA designated examiners to provide examinations under BasicMed

Currently, FAA Designated Pilot Examiners (DPE) are required to maintain at least a third-class medical certificate when performing the duties as an examiner.¹⁰ Unfortunately, this requirement creates negative impacts to safety and costs to DPEs, pilot applicants, and the FAA.

In 2021, these impacts were discussed and debated carefully by AOPA and other aviation industry stakeholders in the Aviation Rulemaking Advisory Committee DPE Working Group. In the final report, the Working Group recommended that “designees should be allowed to perform examinations with an equivalent level of medical certification that would be necessary for that designee to act as PIC of that aircraft (i.e., if you can act as PIC in the aircraft, then you should be qualified as an examiner (medically)).”¹¹ In short, AOPA and other industry stakeholders recommended allowing designees to provide examinations under BasicMed. Doing so would mean reduced costs by reducing turnover and training, creating a wider pool of well-qualified DPE applicants, and increasing utilization of DPEs for pilot applicants. Safety will be increased through retention of experienced DPEs.

AOPA recommends the FAA propose amendments to allow designated examiners to provide evaluations under BasicMed, specifically amending 14 CFR 61.23, through a Supplemental Notice of Proposed Rulemaking of FAA-2021-1040, or in another relevant rulemaking planned for publication.

⁹ 14 CFR 61.3(c)(1)

¹⁰ 14 CFR 61.23(a)(3)(iv)

¹¹

https://www.faa.gov/regulations_policies/rulemaking/committees/documents/media/ARAC%20DPEWG%20Final%20Recommendation%20Report%20June%202021.pdf

AOPA appreciates the FAA's consideration of our comment on this important issue with safety and the future growth of the next generation of pilots and aviation professionals in mind. Please feel free to contact me at 202-737-7950 if you have any questions.

Sincerely,



Christopher J. Cooper
Senior Director, Regulatory Affairs

The Aircraft Owners and Pilots Association (AOPA) is a not-for-profit individual membership organization of general aviation and aircraft owners. AOPA's mission is to effectively serve the interests of its members and establish, maintain, and articulate positions of leadership to promote the economy, safety, utility, and popularity of flight in general aviation aircraft. Representing two-thirds of all pilots in the United States, AOPA is the largest civil aviation organization in the world.