

Factual Report – Attachment 24
FAA Legal Interpretations

OPERATIONAL FACTORS

WPR19MA177



Federal Aviation Administration

Memorandum

Date: March 2, 2020

To: Director, Accident Investigation Division, AVP-100

From: [REDACTED] Lorelei Peter, Assistant Chief Counsel for Regulations, AGC-200

Subject: National Transportation Safety Board (NTSB) Information Request 20-069
Event: N256TA, Mokuleia, Hawaii, 6/21/2019

On January 9, 2020, the Federal Aviation Administration Accident Investigation Division (AVP-100) requested that the Office of the Chief Counsel provide a legal opinion in response to a request from the National Transportation Safety Board (NTSB). Referencing the NTSB accident investigation for the Mokuleia, HI parachute operation, the NTSB requested a legal opinion as to whether the following training events are permitted by the Code of Federal Regulations:

- (1) The accident pilot's logbook showed flight instruction signed off by a CFI for 14 CFR 61.129(b)(4)(i) and (ii), 61.129(b)(1), and 61.129(b)(3)(iii) commercial cross-country flight instruction in a multi-engine turbine powered King Air BE9L; however, the accident pilot only had a student pilot's license and was primarily training for his private license in a single-engine PA28;
- (2) The accident pilot's logbook showed flight instruction signed off by a CFI for 14 CFR 61.127(b)(2) commercial flight proficiency instruction in a multi-engine turbine powered King Air BE9L; however, the accident pilot only had a private pilot's license and was primarily training for his commercial license in a Seneca PA34; and
- (3) The accident pilot's logbook showed flight instruction signed off by a CFI for "First Officer" training while he was still a student pilot.

Analysis

Training Event 1

In the first scenario, the pilot held a student pilot certificate and was primarily training for his private pilot certificate in a single-engine PA28. Based on the pilot's logbook, he received flight instruction in a multi-engine turbine powered King Air BE9L that satisfied the commercial cross-country flight training requirements specified in § 61.129(b)(1), (b)(3)(ii) and (b)(4)(i) and (ii).

As explained in more detail below, a person may receive training at the commercial pilot level prior to obtaining his or her private pilot certificate. However, in preparation for the practical test, the regulations require a commercial pilot applicant to receive at least 3 hours of training in the category and class of aircraft for which the rating is sought within 2 calendar months preceding the month of the practical test. § 61.129(a)(3)(v) and (b)(3)(v). Additionally, the authorized instructor who provided this training is required to provide an endorsement certifying that the applicant has received and logged this training and is prepared for the practical test. §§ 61.39(a)(6)(i) and (ii), 61.123(e)(2) and (f).

The training event described in the first scenario is permitted under 14 CFR part 61. Section 61.129(b) contains the aeronautical experience required for a commercial pilot certificate with an airplane category multi-engine class rating. As stated above, § 61.129(b)(3)(v) requires 3 hours of training in a multiengine airplane within the 2 months preceding the month of the practical test. However, the other aeronautical experience requirements do not specify when the training must be logged. Furthermore, § 61.123 contains the eligibility requirements for a person seeking a commercial pilot certificate. Section 61.123(f) requires an applicant for a commercial pilot certificate to meet the aeronautical experience requirements that apply to the aircraft category and class rating sought *before* applying for the practical test. Additionally, § 61.123(h) requires the commercial pilot applicant to hold at least a private pilot certificate issued under part 61.

As explained in a legal interpretation issued to Mr. Asp on July 28, 2015, an applicant's eligibility for a commercial pilot certificate is assessed on the date the person applies for the practical test, not the date the person begins training. Therefore, a pilot may log training time towards a commercial pilot certificate prior to obtaining a private pilot certificate.¹ The training must be logged in accordance with 14 CFR 61.51(h).² In addition, to be counted towards the commercial pilot aeronautical experience requirements of § 61.129(b), the pilot must have been trained and evaluated at the commercial pilot level.³

Based on the accident pilot's logbook, the training was logged in accordance with § 61.51(h) and was described as commercial pilot training. For the reasons explained above, the FAA finds that the training described in the first scenario is permissible under the regulations.

Training Event 2

In the second scenario, the accident pilot held a private pilot certificate and was primarily training for his commercial pilot certificate in a Seneca PA34. The Seneca PA34 is a multi-engine airplane with piston engines. Based on the pilot's logbook, he received flight instruction in a multi-engine turbine powered King Air BE9L, which consisted of commercial flight

¹ Legal Interpretation to Mr. Asp, dated July 28, 2015.

² Section 61.51(h) provides that a person may log training time when that person receives training from an authorized instructor in an aircraft, full flight simulator, flight training device, or aviation training device; (2) the training time must be logged in a logbook and must: (i) be endorsed in a legible manner by the authorized instructor; and (ii) include a description of the training given, the length of the training lesson, and the authorized instructor's signature, certificate number, and certificate expiration date.

³ As explained in a Legal Interpretation issued to Mr. Theriault on October 8, 2010, the training time logged while training for private pilot certificate may not be used to satisfy the requirements for the commercial pilot certificate. The applicant must satisfy the requirements of § 61.129 while training for the commercial pilot certificate, not while training for the private pilot certificate.

proficiency instruction in accordance with § 61.127(b)(2) and was endorsed by a flight instructor.

Section 61.127(a) requires a commercial pilot applicant to have received and logged flight training from an authorized instructor on the areas of operation that apply to the aircraft category and class rating sought. The areas of operation for a multi-engine airplane are contained in § 61.127(b)(2). Additionally, § 61.129(b)(3) requires at least 20 hours of training on the areas of operation listed in § 61.127(b)(2), including 10 hours of training in a multiengine complex or turbine-powered airplane.⁴

The training event described in the second scenario is permitted under part 61. The regulations do *not* prohibit a private pilot from receiving flight training at the commercial pilot level in different multi-engine airplanes. Rather, under § 61.129(b)(3)(ii), a person seeking a commercial pilot certificate must receive and log at least 10 hours of training in a multiengine complex *or* turbine-powered airplane. Therefore, the training obtained in the King Air BE9L could be counted towards the 10 hours of multi-engine turbine-powered airplane time. The training obtained in the King Air BE9L could also be counted towards the aeronautical experience requirement of § 61.129(b)(3) because it consisted of training on the areas of operation listed in § 61.127(b)(2). Furthermore, while the second scenario does not specify what category and class rating the pilot held on his private pilot certificate, the FAA notes that pilot may apply for a rating on his commercial pilot certificate without holding that rating on his private pilot certificate.⁵ This is because § 61.123(f) requires only that the commercial pilot applicant hold a private pilot certificate; it does not specify a category and class requirement.

Training Event 3

In the third scenario, the NTSB questions whether a student pilot may log “First Officer Training” under the regulations.

From a regulatory perspective, the FAA does not have “first officer training.” Because the term is not used in the FAA’s regulations, it is unclear what the CFI sign off for “first officer training” means. The FAA notes, however, that the regulations do contain requirements for a pilot to serve as second-in-command (SIC). To the extent “first officer” may mean “second-in-command”, the FAA notes that it has requirements to serve as second-in-command (SIC) in parts 61, 121, and 135. Section 61.55(b) contains familiarization training requirements for a pilot to serve as SIC. For parts 121 and 135, the requirements to serve as SIC are met through an air carrier’s or commercial operator’s approved training program. Because the person held only a student pilot certificate and received flight training from a certificated flight instructor, it is possible that the “First Officer” training mentioned in the logbook was intended to mean SIC familiarization training in accordance with § 61.55. However, the FAA would need more information to assess whether the training described in scenario 3 is in compliance with the regulations.

⁴ 61.129(b)(3)(iii)

⁵ Legal Interpretation to Mr. McLellan, dated June 5, 2015.