



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

Office of the Chief Counsel

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

AUG 27 2018

Lawrence Williams
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Dear Mr. Williams:

This is in response to your letter dated March 19, 2018, in which you sought a legal interpretation concerning whether a flight instructor would be required to hold a medical certificate when not acting as pilot in command (PIC) under two scenarios.

Under the first scenario, a flight instructor is providing flight training in a multiengine aircraft. The student receiving the flight training holds a pilot certificate with a single-engine rating. The student is seeking to add a multiengine rating. You asked if the flight instructor in this scenario would be required to hold a medical certificate. You stated that the flight instructor would not be acting as PIC.

Under § 61.31(d), to act as PIC of an aircraft a person must: (1) hold the appropriate category, class, and type rating (if a class or type rating is required) for the aircraft to be flown; or (2) have received training required by part 61 that is appropriate to the pilot certification level, aircraft category, class, and type rating (if a class or type rating is required) for the aircraft to be flown, and have received an endorsement for solo flight in that aircraft from an authorized instructor. Therefore, the student may not act as PIC of the multiengine aircraft because the student does not hold a multiengine class rating on his or her pilot certificate.¹ As a result, the flight instructor in your scenario would be required to act as PIC.

Section 61.23(a)(3)(ii) requires a person to hold a third class medical certificate when exercising the privileges of a flight instructor certificate and acting as PIC or as a required flight crewmember, except when operating under the conditions and limitations set forth in § 61.113(i). Section 61.113(i) contains the aircraft and operating requirements for conducting an operation under BasicMed.² Therefore, the requirement for the flight

¹ A pilot who is performing the duties of PIC under the supervision of an authorized flight instructor is not acting as PIC of the aircraft during solo flight. Therefore, the requirement to have an endorsement under § 61.31(d)(2) does not apply to that pilot. *See* Legal Interpretation to B. Dan Crowe (Feb. 4, 2013) (stating that “[a] pilot requires a § 61.31(d) endorsement only for the purpose of conducting solo flight in an aircraft for which the pilot is not rated.”).

² On July 15, 2016, Congress passed legislation, *FAA Extension, Safety, Security Act of 2016* (FESSA), which included relief from holding an FAA medical certificate for certain pilots. The FAA refers to this relief as

instructor to hold a third class medical certificate would depend on whether the flight instructor were operating under BasicMed.³

Under BasicMed, a person may exercise flight instructor privileges while acting as PIC of an aircraft without holding a medical certificate, provided that person holds a U.S. driver's license and meets the BasicMed requirements, including § 61.23(c)(3), § 61.113(i), and part 68. 14 CFR §§ 61.3(c)(2)(xiv), 61.23(c)(1)(vi). Section 61.23(c)(3) contains the requirements for using a U.S. driver's license to operate under BasicMed. As previously mentioned, § 61.113(i) contains the aircraft and operating requirements for conducting an operation under BasicMed. Lastly, part 68 prescribes the medical education and examination requirements for operating an aircraft under § 61.113(i) without holding a medical certificate issued under part 67. If the flight instructor in your scenario complies with these requirements, that flight instructor may provide flight training to the student in a multiengine aircraft while acting as PIC without holding a medical certificate. However, if the flight instructor in your scenario is not operating under BasicMed, he or she must hold a current third class medical certificate.

Under the second scenario, a flight instructor is providing instrument training to a certificated pilot who is seeking to add an instrument rating. The flight instructor is *not* occupying the other pilot station. Instead, the flight instructor would provide the instrument training from either the jump seat or another passenger seat. You explained that a safety pilot would occupy the copilot seat and that safety pilot would hold the appropriate certificate and ratings and be qualified to operate the aircraft. You asked whether the flight instructor in this scenario would be required to hold a medical certificate. You also noted that FAA inspectors routinely administer flight checks under instrument conditions while occupying either a jump seat or other passenger seat without being current or holding a medical certificate.

It is unnecessary to interpret whether the flight instructor in your second scenario would be required to hold a medical certificate because the operation you described would be a violation of §§ 61.195(g) and 91.109(a). Section 61.195 prescribes limitations and qualifications for flight instructors. As evident from the heading in § 61.195(g), § 61.195(g) prescribes limitations on the flight instructor's position in an aircraft and required pilot stations for flight training. Section 61.195(g)(2), in pertinent part, requires a flight instructor who provides flight training for a pilot certificate or rating issued under part 61, to provide flight training in an aircraft that has at least two pilot stations. Canons of construction prescribe that all language in a statute be given effect. Therefore, the FAA should construe regulatory text so that no word or clause is rendered superfluous, void or insignificant.⁴

BasicMed. In a final rule that published on January 11, 2017, the FAA amended parts 61 and 91 and created new part 68 to conform to the legislation.

³ For more information on BasicMed, *see* https://www.faa.gov/licenses_certificates/airmen_certification/basic_med/

⁴ *Corely v. U.S.*, 556 U.S. 303, 314 (2009) (“A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.”).

Accordingly, the FAA interprets § 61.195(g)(2) as requiring one pilot station for the student and one pilot station for the flight instructor. The regulation would not require two pilot stations for a training flight unless the flight instructor were required to provide flight training from the one of the pilot stations. Interpreting the provision to the contrary would render the requirement for a second pilot station superfluous.

The FAA's interpretation of § 61.195(g)(2) is reinforced by § 61.195(g)(1), which requires a flight instructor to perform flight training from an aircraft that complies with § 91.109. Section 91.109(a) prohibits a person from operating a civil aircraft (except a manned free balloon) that is being used for flight instruction unless that aircraft has fully functioning dual controls. However, a flight instructor may give instrument flight instruction in an airplane that is equipped with a single, functioning throwover control wheel that controls the elevator and ailerons, in place of fixed, dual controls, when the flight can be conducted safely, and the person manipulating the controls has at least a private pilot certificate with appropriate category and class ratings.

Therefore, in addition to providing the instrument training in an aircraft that has two pilot stations, the flight instructor in your scenario must provide the instrument training in an aircraft that has either fully functioning dual controls or a single, functioning throwover control wheel. As stated in a legal interpretation, § 91.109(a) was established to ensure that the flight instructor could take over the controls of the aircraft in case of an emergency.⁵ Additionally, as evident from the Flight Instructor Instrument Practical Test Standards, one of the flight instructor's responsibilities is to be able to perform the procedures and maneuvers included in the PTS to the instrument pilot skill level while giving effective flight instruction.⁶ If the flight instructor were sitting in a jump seat or passenger seat without access to the flight controls, that flight instructor would be unable to assist or take over in an emergency situation and be unable to demonstrate the procedures and maneuvers to the student in order to give effective flight instruction. Furthermore, the requirement for flight instruction to occur in an aircraft that contains either dual controls or a throwover control wheel would be meaningless unless the flight instructor were required to sit in the second pilot station and have access to the controls.⁷

For the reasons stated above, the FAA finds that when §§ 61.195(g) and 91.109(a) are read together, the requirement for a flight instructor to provide instrument training from a pilot station with access to the controls is unambiguous. The FAA notes, however, that the flight instructor in your second scenario may provide the instrument training from the second pilot station without holding a current medical certificate, provided the flight instructor, the aircraft, and the flight operation meets the BasicMed requirements discussed above.

⁵ See Legal Interpretation to Mr. Robert Hackman (July 29, 1999).

⁶ See Flight Instructor Practical Test Standards for Airplane, FAA-S-8081-6D (June 2012).

⁷ The FAA recognizes that preamble to the 1997 final rule (62 FR 16298) may indicate a different intent. However, in interpreting the express language of §§ 61.195(g) and 91.109(a), the FAA finds that the requirements would serve no purpose if the flight instructor were not required to sit in the second pilot station where the flight instructor could intervene in the case of an emergency and actively flight instruct by demonstrating procedures and maneuvers.

In response to your assertion that inspectors administer flight checks under instrument conditions while occupying either a jump seat or other passenger seat without being current or holding a medical certificate, the FAA agrees that FAA inspectors conduct certain checks from an observer seat without a current medical. However, during these checks, the inspector never exercises the privileges of a flight instructor certificate. Since the inspector is only there to observe and evaluate, a discussion of an FAA inspector's medical qualifications is not relevant to the medical qualifications of a flight instructor.

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,

A handwritten signature in black ink, appearing to read "Lorelei D. Peter". The signature is fluid and cursive, with the first name being the most prominent.

Lorelei D. Peter
Assistant Chief Counsel for Regulations, AGC-200

[REDACTED]
March 19, 2018

Office of the Chief Counsel
800 Independence Avenue SW
Washington, DC 20591

RE: Request for legal Interpretation

Greetings;

I request a legal interpretation concerning if a flight instructor must hold a current medical certificate when not acting as pilot in command under the following conditions:

1. Giving multi-engine flight instruction to a rated single-engine pilot working toward the additional multi-engine rating.
- 2.
3. Giving instrument training to a rated pilot attempting to add an instrument rating, if the required safety pilot is properly rated, qualified and possesses a current medical certificate and the flight instructor does not occupy a required seat (safety pilot seat or copilot seat if two pilots are required), i.e. either jump seat or another passenger seat. In other words, the required safety pilot may occupy the copilot seat (with functioning dual controls and would be current qualified to act as pilot in command of the flight. It should be noted that FAA inspectors routinely administer flight checks under instrument conditions while occupying either a jump seat or other passenger seat without being current or holding a current medical certificate.

Your assistance in this matter is appreciated.


Lawrence Williams