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

Office of the Chief Counsel

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

AUG - 2 2018

Mr. David J. Oord
Senior Director, Government Affairs, Regulatory
Aircraft Owners & Pilots Association
421 Aviation Way
Frederick, MD 21701

Dear Mr. Oord:

This letter is in response to your email to the Airman Training and Certification Branch of the Flight Standards Service in which you raise concerns about a potential conflict between three letters of interpretation the Federal Aviation Administration (FAA) issued. As the issue involves legal interpretation, Flight Standards has requested that the Office of the Chief Counsel provide a response. The FAA does not find any conflict between the letters of interpretation at issue and, therefore, they remain in effect. I hope that the supplementary discussion of those letters below addresses all of your concerns.

The FAA was initially asked whether an individual may simultaneously satisfy the five-hour training requirement under 14 C.F.R. § 61.129(c)(3)(i) by obtaining an instrument rating or training for an instrument rating pursuant to § 61.65(e).[1] In a legal interpretation to Mr. Richard Theriault dated October 8, 2010, the FAA stated that an instrument rating or training would not satisfy § 61.129(c)(3)(i). The FAA highlighted that the training conducted pursuant to these two paragraphs are not invariably equivalent because § 61.129(c)(3)(i) contains specific training criteria not found in § 61.65(e).

In two subsequent letters, the FAA fleshed out its response to the initial question. In a second letter to Mr. Theriault dated July 6, 2011, the FAA explained that, while training can and may meet the requirements of both paragraphs, simply holding an instrument rating or having completed training for an instrument rating cannot be automatically assumed to meet the training required under § 61.129. Accordingly, an individual could log time performing activities that meet the requirements of § 61.65(e) and those same activities might fail to satisfy all or some of the requirements of § 61.129(c)(3)(i). For example, the instrument training for § 61.65(e) may

[1] Although the 2010 legal interpretation to Mr. Theriault specifically focused on training for a commercial pilot certificate with a rotorcraft category helicopter class rating under § 61.129(c), the FAA's interpretation applies equally to flight training in the airplane category under § 61.129. Nothing in this document changes the requirement that a flight instructor must have an instrument rating on his instructor certificate to provide instrument training for a commercial pilot or ATP certificate and the legal interpretation in the letter to Dr. Jablecki dated June 30, 2016, is controlling.

not have included specific instrument training on recovery from unusual attitudes as required by § 61.129.

To allow for training time to count towards both § 61.65(e) and § 61.129(c)(3)(i) in cases where it meets the requirements of both, as stated in the letter to Ms. Kristine Hartzell dated December 17, 2010, that time must be logged consistent with § 61.51 and documented in a manner that demonstrates the time counts towards the commercial pilot certificate and ratings. In its letter to Ms. Hartzell, the FAA explains it is "merely clarifying the requirement that the applicant for a commercial pilot certificate provide evidence that they have met the requirements of § 61.129."

To summarize, if training conducted pursuant to § 61.65(e) meets the requirements of § 61.129(c)(3)(i), that time can count towards the five hours of instrument aeronautical experience under § 61.129(c)(3)(i). However, pursuant to § 61.51, that time also must be logged as prescribed allowing for verification by the FAA.

We appreciate your patience and trust that the above addresses your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Gahan Christenson, an attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the Flight Standards Service.

Sincerely,

Lorelei D. Peter
Assistant Chief Counsel for Regulations

Kim, can you assign this one to Gahan?

Gahan, we can talk about this when you have time.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

From: Bernard, Marcel (FAA)
Sent: Thursday, April 19, 2018 4:10 PM
To: Moore, Anne (FAA) <anne.moore@faa.gov>

Cc: Hayes, Shawn (FAA) <Shawn.Hayes@faa.gov>
Subject: AOPA Inquiry and Interp Conflict

Hi Anne,

Shawn asked be to check with you concerning an inquiry I have from David Oord concerning, the instrument training requirements for the Commercial Pilot Certificate, and two legal interps that appear to conflict with each other. I'm guessing you're already familiar with this.

See this incoming inquiry from David asking us to resolve.

MEMBER QUESTION

There is a long story, and I type way to slow from this ipad. But, in 2010 it appears on behalf of a dude name Theriault, Kristine Hartzell from AOPA wrote the FAA for an interpretation on the instrument time in 61.129 specifically for rotorcraft but, it's the same for Amel, Asel, etc...Stating that training in 61.65 should and can count for 5 of the required 10 in 61.129.

What I got from the muddy interpretation was unless it was specifically documented that the 61.65 training, at least 5 hours of hood time, meeting the same experience required of 61.129...training for an instrument ticket does not get you the other 5 hours credited. So all ten would need to be completed in the multi, rotorcraft etc....

There's a possible issue that no one interpreted these two regs like this and one of my flight school brought it to my attention...so, I'm just curious how AOPA understands it. I asked a friend to read it through her lawyer eyes...as I thought it read like someone didn't want to give a straight answer...and she concurred.

David J. Oord

Sr. Director, Government Affairs, Regulatory

Aircraft Owners & Pilots Association

David references these two legal interpretations. The first being the Theriault legal interpretation dated 10-0-2010, that in part states,

"The training given to satisfy the instrument training aeronautical experience requirement of 61.129(c)(3)(i) may also be used to count toward the aeronautical experience of 61.65(e), ***but the opposite is not true****." The reason for this is that training required under 61.65(e) is general, while the training under 61.129(c)(3)(i) lists very specific operations that must be accomplished to satisfy the [commercial pilot training] requirements."*

The following with the Hartzell Legal Interpretation dated 12-17-2010 then in part states,

"The interpretation [referring to the Theriault interp] dispels the notion that holding an instrument rating is , on its own, sufficient evidence that the applicant has fulfilled the aeronautical experience requirements for a commercial pilot certificate under §61.129. However, we anticipate that for commercial pilot applicants who already hold an instrument rating, ***the hours of instrument training used to obtain that rating will meet at least some, if not most, or quite often, meet all of the requirements of instrument experience*** *as required under §61.129."*

These two legal interpretations seem to conflict with each other. Even though the first interpretation is helicopter specific, the overall question is still applicable for airplane. There is no way for me to answer David's question with these conflicting interpretations. I have an opinion (similar to David's), but with these conflicting interpretations I don't believe I can provide a policy call without it coming into question, because of these somewhat ambiguous legal interps.

Shawn thought that maybe AGC had resolved this somehow. Do you have any information or resolve for this?

Thanks,

Marcel Bernard
Aviation Safety Inspector
Aviation Training Device (ATD) National Program Manager
Federal Aviation Administration, Flight Standards Service HQ
Airmen Training and Certification Branch, AFS-810
202-267-1092