U.S. Department
of Transportation
Federal Aviation
Administration

Office of the Chief Counsel

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

JAN 11 2011

Daniel Murphy
[redacted]

Dear Mr. Murphy,

This is in response to your April 27, 2010, letter, regarding two issues: (1) anticollision lights; and (2) aeronautical experience necessary for a commercial pilot certificate. Your questions concerning anticollision lights are answered in the first section of this response, and your question concerning cross-country flight experience is answered in the second section of this response.

I. Anticollision lights under 14 C.F.R. 91.209(b)

Your first two questions deal with 14 C.F.R. 91.209(b), which requires that an aircraft equipped with an anticollision light system must have the anticollision lights turned on during operations.

a. Point at which the anticollision lights must be turned on

Your first question asks for clarification concerning the point at which the anticollision lights must be turned on under § 91.209(b) (i.e. "engine start, taxi, takeoff, etc.").

Section 91.209(b) states that a person may not "[o]perate an aircraft that is equipped with an anticollision light system unless it has lighted anticollision lights." The term "operate" is defined in 14 C.F.R. 1.1 as "use, cause to use or authorize to use aircraft, for the purpose . . . of air navigation . . ." The FAA has stated that the term operate "applies to 'those acts which impart some physical movement to the aircraft, or involve the manipulation of the controls of the aircraft such as starting or running an aircraft engine.'" May 4, 1979, Letter to Delfina R. Mott from Edward P. Faberman, Acting Assistant Chief Counsel (quoting Amendment 91-43, 32 Fed. Reg. 9640 (1967)).

As the FAA's 1979 letter points out, an aircraft is being operated when its engine is turned on with the intent of using that aircraft to take off and engage in air navigation. *See id.* As such, § 91.209(b) requires that an aircraft's anticollision lights be turned on once that aircraft's engine is started for the purpose of air navigation. As a safety precaution, the anticollision lights should be on before starting an engine or causing a propeller or rotor to move.

b. Whether the rotating beacon and the strobe light system must both be turned on

Your second question concerns a situation in which an aircraft has both an anticollision rotating beacon and an anticollision strobe light system. You ask whether § 91.209(b) requires that both the beacon and the strobe light be turned on while the aircraft is being operated or whether just turning on the beacon would be sufficient.

As discussed above, 14 C.F.R. 91.209(b) requires that "an aircraft that is equipped with an anticollision light system" must have the anticollision lights turned on while it is being operated. However, § 91.209(b) permits the pilot-in-command ("PIC") to turn off the anticollision lights if he or she "determines that, because of operating conditions, it would be in the interest of safety to turn the lights off."

As an initial matter, it appears that the strobe light and the rotating beacon are part of the same anticollision system. The airworthiness standard that governs the need for an airplane to be equipped with an anticollision light system, 14 C.F.R. 23.1401(a)(1), states that "[t]he airplane must have an anticollision system that . . . consists of one or more approved anticollision lights . . ." Because the strobe light and the rotating beacon are both approved anticollision lights, under § 23.1401(a)(1), they are part of the same anticollision system. *See id.*

In the preamble to the final rule creating the regulation that ultimately became § 91.209(b), the FAA recognized several commenters who raised concerns that "the use of a strobe light as an anticollision light would create an unsafe condition during certain aircraft operations, such as taxiing, takeoff, and landing." 43 Fed. Reg. 22636, 22637 (May 25, 1978). The FAA agreed that "the use of a high intensity anticollision light," such as a strobe light, could create unsafe conditions by "induc[ing] vertigo and caus[ing] spatial distortion." *Id.* As a result, the FAA amended the pertinent regulatory language to give the PIC the discretion to control how many lights are turned on in the anticollision system "in the interests of safety." *Id.*

The above need to address possible strobe-light-related safety risks in the final regulatory language shows that § 91.209(b) intended that the strobe lights be turned on while an aircraft is being operated. *See id.* Moreover, because section 91.209(b) does not contain an exception for alternative sources of anticollision lighting, turning on the anticollision beacon would not relieve a pilot from the requirement to turn on the anticollision strobe lights. *See* § 91.209(b). However, § 91.209(b), does give the PIC the discretion to turn off the anticollision beacon and/or the anticollision strobe light system if the PIC determines that it is in the interests of safety to turn off either one or both of these components of the same lighting system. *See id.*

II. Aeronautical experience for a commercial pilot certificate

Your final question deals with 14 C.F.R. 61.129(a)(3)(iii), which requires that an applicant for a commercial pilot certificate complete a two-hour cross country flight. You ask whether a person who only has a student pilot certificate may complete this requirement while training for his or her private pilot certificate.

Section 61.129(a)(3)(iii) requires applicants for a commercial pilot certificate to first complete "[o]ne 2-hour cross country flight in a single engine airplane in daytime conditions that consists of a total straight-line distance of more than 100 nautical miles form the original point of departure." The notice of proposed rulemaking, which proposed the cross-country flight requirement in § 61.129(a)(3)(iii) explained that:

> The intent of the proposals is to increase applicants' exposure to the demands and pressures of cross-country navigation under both day and night conditions, in increasingly complex airspace conditions, and at commercial pilot level standards. The FAA believes that this additional experience under flight instructor supervision will help produce better trained commercial pilot applicants.

60 Fed. Reg. 41160, 41181-82 (Aug. 11, 1995) (promulgated with slight modifications on April 4, 1997, 62 Fed. Reg. 16298).

The FAA recently issued an interpretation addressing a situation in which a pilot wanted to use the experience he obtained while training for a private pilot certificate to satisfy the night cross country experience required for a commercial pilot certificate. *See* Oct. 8, 2010, Letter to Richard Theriault from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations. The FAA's interpretation did not permit the pilot to use experience that he acquired while training for a private pilot certificate to satisfy the commercial pilot requirements. *Id.*

Because a student pilot who is training for a private pilot certificate is not expected to perform at commercial-pilot-level standards, the type of training contemplated by § 61.129(a)(3)(iii) is not interchangeable with the kind required for a private pilot certificate. *See id.*; 60 Fed. Reg. at 41181-82. Accordingly, any cross-country training experienced by a student pilot would not be credited toward the requirements of § 61.129(a)(3)(iii).

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3011. This response was prepared by Alex Zektser, Attorney, Regulations Division of the Office of the Chief Counsel, and coordinated with the General Aviation and Commercial Division of Flight Standards Service.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200