U.S. Department
of Transportation
Federal Aviation
Administration

Office of the Chief Counsel

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

August 24, 2022

Robert J. Whalen III
500victory@gmail.com

Dear Mr. Whalen:

We have received your email requesting an interpretation of § 61.159(d)(2) of Title 14 of the Code of Federal Regulations (14 CFR). You asked whether, under § 61.159(d)(2), an applicant needs to be a commercial pilot before becoming a flight engineer (FE) to log FE time towards the aeronautical experience requirement for an airline transport pilot (ATP) certificate. We have determined that this question is appropriate for legal interpretation. After reviewing the regulatory history and associated preambles, the Office of the Chief Counsel has determined that an applicant is not required to be a commercial pilot before becoming a flight engineer to log FE time towards the 1,500 hour flight-time requirement for an ATP certificate.

Section 61.159(d) states, in relevant part, that "A commercial pilot may log the following flight engineer flight time toward the 1,500 hours of total time as a pilot required by § 61.160: [] (2) Flight-engineer time, provided the flight time - (i) Is acquired as a U.S. Armed Forces' flight engineer crewmember in an airplane that requires a flight engineer crewmember by the flight manual; (ii) Is acquired while the person is participating in a flight engineer crewmember training program for the U.S. Armed Forces; and (iii) Does not exceed 1 hour for each 3 hours of flight engineer flight time for a total credited time of no more than 500 hours." 14 CFR 61.159(d)(2)(i)-(iii).

We understand that your question is related to the FAA's use of "commercial pilot" in the opening sentence of § 61.159(d). The preambles published in support of this regulation inform the Agency's intent. See Fina Oil & Chem. Co. v. Norton, 332 F.3d 672, 677 (D.C. Cir. 2003) (explaining preambles may demonstrate agency's contemporaneous intent). In particular, the regulatory history illustrates that the FAA used the phrase "commercial pilot" to distinguish between flight time accrued in scheduled air carrier service and that achieved in small airplanes used in general aviation operations. See 33 F.R. 12780, 12781 (Sept. 10, 1968). The FAA codified this regulation, in part, to recognize the value gained from the comprehensive experience, training, and checking obtained while conducting scheduled air carrier services, as opposed to that acquired "in a small aircraft flown for pleasure on weekends[.]" See id. at 12781.

Recognizing this distinction, the FAA sought to acknowledge the value of flight time accrued by flightcrew members as they progressed from the ranks of FE to second-in-command (SIC) to pilot-in-command (PIC) in scheduled air carrier service. See id. at 12781 (citing "concurrent, orderly expansion of the industry's complement for flightcrew[] members"). The FAA asserted that pilots who began their service as an FE were subject to the air carrier's training program and, by the time they achieved the rank of PIC, would have been flying the line as an SIC and FE. See id. This experience, the FAA reasoned, was valuable and, as such, should be credited towards the hour requirement for an ATP certificate.

To ensure safety while recognizing the experience of FEs, the FAA limited the amount of flight time FEs may credit while serving in that capacity. See id. at 12780. For example, to log FE time, the regulation prescribes that the airplane manual must require FEs, the operation must be conducted under part 121, and the FE must concurrently participate in the air carrier's pilot training program. See id. These restrictions, the FAA reasoned, would allow recognition of the training and experience a pilot obtains during their time serving as a FE, while maintaining safety for the passengers on board and the public on the ground. See id.

Subsequently, the FAA amended the regulation to allow U.S. military flight engineers to similarly credit their flight time when applying for an ATP certificate. See 74 F.R. 42500, 42535 (Aug. 21, 2009). In extending the logging allowance to U.S. military personnel, the FAA explained its intent to afford military FEs "the same opportunity" as that granted to flight engineers employed by a part 121 operator. Id. However, in extending the regulation's applicability to military personnel, the FAA never removed the "commercial pilot" reference from the introductory language in § 61.159(d).

Notwithstanding the reference to a "commercial pilot," the history supporting § 61.159(d)(2) illustrates that the FAA intended to utilize this language to distinguish the extensive experience FEs accrue during commercial part 121 operations, as opposed to that obtained during general aviation operations in small aircraft. Thus, the regulation was not intended to prescribe that the individual first obtain a commercial pilot certificate before becoming an FE. Rather, the FAA's intent, memorialized in the associated preambles, was to allow FEs to credit their time when serving in "commercial" operations for a scheduled air carrier or, by extension of the 2009 amendment, while serving in the military.

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 Amanda Geary, Attorney Advisor in the Regulations Division of the Office of the Chief Counsel.

Sincerely,

SARA L MIKOLOP

Digitally signed by SARA L MIKOLOP
Date: 2022.08.24 11:28:11 -04'00'

Sara Mikolop
Acting Assistant Chief Counsel for Regulations