



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

Office of the Chief Counsel

800 Independence Ave., SW.  
Washington, DC 20591

**JUL 22 2015**

Samuel T. Ragland  
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6961 South Apron Drive  
Tucson, AZ 85706

Re: Request for Interpretation Regarding the Meaning of "Necessary Training" in 14  
CFR 61.49(a)(1)

Dear Mr. Ragland:

Thank you for your March 24, 2015, letter requesting a legal interpretation on the meaning of the term "necessary training" in Title 14 Code of Federal Regulations (CFR) 61.49(a)(1) and who has the discretion to determine the training necessary to re-endorse an applicant to take a practical test after the applicant has failed a practical test.

In your letter you stated that Designated Pilot Examiners (DPEs) in your area have generally required retraining after failure of a practical test to specifically involve ground training if the failure was during the oral examination and flight training if the failure was during the flight portion of the training. You stated that, recently, a DPE issued a notice of disapproval to an applicant during the flight portion of an Instrument Airplane practical test and the DPE stated that an oral evaluation would be sufficient to re-endorse and retest the applicant.<sup>1</sup> Based on these facts you asked two questions. First, you asked whether requiring an oral evaluation after an applicant fails during the flight portion of a practical test is a common interpretation of the term "necessary training" as found in § 61.49(a)(1). Second, you asked who has the discretion to determine what type of retraining is necessary to re-endorse an applicant for retesting based on a showing of proficiency. We will address each of your questions in more detail below.

Your first question was whether requiring an oral evaluation after an applicant fails during the flight portion of a practical test is a common interpretation of the term "necessary training" as found in § 61.49(a)(1). Section 61.49 describes the requirements for retesting after the failure of a knowledge test or a practical test. Section 61.49(a) specifically requires that:

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<sup>1</sup> This legal interpretation speaks only to the training after an applicant fails a practical test, not to the content of the retest.

An applicant for a knowledge or practical test who fails that test may reapply for the test only after the applicant has received: (1) The necessary training from an authorized instructor who has determined that the applicant is proficient to pass the test; and (2) an endorsement from an authorized instructor who gave the applicant the additional training.

While we cannot comment on the commonness of a specific interpretation of the term "necessary training," we do find that a DPE does not have the authority to require an applicant to complete specific training before retesting. Under § 61.47(a), a DPE evaluates an applicant and determines whether the applicant is satisfactory or unsatisfactory in each area of operation and task of the practical test. In the event that the applicant's performance is unsatisfactory, the DPE issues a Form 8060-5 Notice of Disapproval which lists each area of operation and task for which the applicant was found unsatisfactory. Under § 61.43(f) an applicant is entitled to credit for those areas of operation that were passed in a previous practical test, subject to some limitations. Therefore, it follows logically that "necessary training" in order to retake a practical test is any training that covers portions of the test where the applicant was found unsatisfactory and that is sufficient for an authorized instructor to endorse the applicant to retake those portions of the practical test.

Your second question was who has the discretion to determine what type of retraining is necessary to endorse an applicant for retesting based on a showing of proficiency. The answer is that an authorized instructor has the discretion to determine what type of additional training is necessary to endorse an applicant for retesting based on a showing of proficiency in the areas of operation and tasks marked deficient by the DPE on Form 8060-5 Notice of Disapproval. Section 61.49(a) requires that an applicant receive the "necessary training" and an endorsement from an authorized instructor who has determined that the applicant is proficient to pass the practical test. The authorized instructor has the sole discretion to determine the scope of the additional training necessary to verify that the applicant is proficient to pass the test. The authorized instructor should be satisfied that the applicant is proficient in the areas of operation and tasks for which the applicant was found unsatisfactory before the instructor endorses the applicant to retake the test. Any additional training received should be logged by the applicant in accordance with the §-61.51(h) requirements for logging training time.

This response was prepared by Benjamin Borelli, an attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the Airman Certification and Training Branch (AFS-810) of the Flight Standards Service. If you need further assistance, please contact our office at (202) 267-3073.

Sincerely,



Lorelei Peter  
Acting Assistant Chief Counsel for Regulations