

November 1, 2010

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**RE: Letter of Interpretation regarding instrument time requirements of part 61.129 Commercial Pilot Certificate**

The Aircraft Owners and Pilots Association (AOPA) is a not-for-profit individual membership organization of more than 406,000 pilots. AOPA's mission is to effectively serve the interests and needs of its members as aircraft owners and pilots and establish, maintain, and articulate positions of leadership to promote the economy, safety, utility, and popularity of flight in general aviation aircraft. Representing two thirds of all pilots in the United States, AOPA is the largest civil aviation organization in the world.

**AOPA Requests that the Letter of Interpretation dated October 8, 2010 regarding the Instrument Time for the Commercial Pilot Certificate be Withdrawn in a Timely Fashion**

The Letter of Interpretation dated October 8, 2010 answers a question regarding the instrument requirements of 14 CFR 61.129(c)(3)(i) specifically addressing the commercial pilot certificate for helicopter, however one can infer that the interpretation could extend to all categories of the commercial pilot certificate. The question asks if the "requirements of 14 CFR 61.129(c)(3)(i) are met by the student getting an instrument rating or training for an instrument rating?" The answer given in the interpretation is "no".

AOPA believes that this is not the intent of the requirement of 61.129 and is an inaccurate interpretation of the regulations.

This new interpretation is already having a direct impact on commercial pilot applicants. AOPA has begun to receive calls that commercial pilot applicants are being turned away by examiners due to this new interpretation of 61.129. **This LOI must be withdrawn immediately in order to minimize further impact on commercial pilot applicants, flight schools and flight instructors.**

## **The Interpretation Changes the Commercial Certificate Requirement**

The Letter of Interpretation (LOI) dated October 8, 2010 reverses all previous understanding of the instrument time requirement of 61.129. 61.129(a) lists the “aeronautical experience” required of an applicant for a commercial pilot certificate with an airplane category and single-engine class rating and requires “Ten hours of instrument training using a view-limiting device including attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems”.

The intent of this aeronautical experience requirement has always been understood to be that it ensures a non-instrument rated commercial pilot has received the training necessary to positively control an aircraft in the event that inadvertent instrument meteorological conditions (IMC) are encountered. This training provides control and escape skills for the applicant in pursuit of a “VFR only” commercial certificate. The required training elements of “attitude instrument flying, partial panel skills, recovery from unusual flight attitudes” are all skills necessary to positively control an aircraft after inadvertent entry into IMC. “Intercepting and tracking navigational systems” provides the skills to necessary to navigate out of the IMC.

A pilot that obtains an instrument rating is required to have at minimum “forty hours of actual or simulated instrument time”. Fifteen hours, of the forty, must have been received from an authorized instructor who holds an instrument-airplane rating, however for most pilots, the full forty hours are given by an authorized instructor. Instrument rated pilots have obtained training to fly in IMC and they have passed FAA administered written and practical exams on flying in instrument conditions. An additional 10 hours in skills necessary to control the aircraft in order to escape IMC are unnecessary for a pilot who has been trained and qualified to fly in IMC.

Until this LOI was written and disseminated to Designated Pilot Examiners (DPE), a commercial applicant with an instrument rating was understood to have fulfilled the requirements of aeronautical knowledge under 61.129. This LOI changes that understanding. AOPA has begun to receive calls that commercial pilot applicants are being turned away due to this new interpretation.

## **In Effect, this LOI enacts Rulemaking Outside of the Rulemaking Process**

The Administrative Procedure Act is the backbone of the Federal rulemaking process. Through this process, the public is provided an opportunity to comment on any federal rulemaking. By issuing a LOI that changes the intent of a regulation, the FAA is essentially making a new rule without offering the public an opportunity to provide input. The issuance of this LOI has, in effect, changed the regulation and undercuts the economic evaluation that is necessary as part of the Regulatory Flexibility Act. The economic evaluation required by the RFA requires balance between proposed regulatory requirements and the capabilities and resources of those being regulated. In order for the FAA to add an additional 10 hours of training to the commercial certificate requirements, the processes laid out by the APA and RFA must be followed.

## **There is No “Start Date” For Enrollment in Training for a Commercial Certificate**

In part 61 training there is no *enrollment* into a commercial training course. One could argue that training to become a commercial pilot begins the day you begin any flight training. All the experience, skills, knowledge and flight time acquired in an aircraft from the day you first sit at the controls contribute to an individual’s competency as a commercial pilot and add to aeronautical experience. Since there is no “start date” for the commercial certificate, all training received by an authorized flight instructor on the areas of aeronautical experience for a commercial certificate laid out in 61.129 should count towards the training requirements of a commercial pilot certificate.

## **The Instrument Training Requirement of 61.129 is Redundant for Pilots with Instrument Ratings**

The Practical Test Standards for the instrument rating states:

“Title 14 of the Code of Federal Regulations (14 CFR) part 61 specifies the areas in which knowledge and skill must be demonstrated by the applicant before the issuance of an instrument rating. The CFRs provide the flexibility to permit the FAA to publish practical test standards containing the AREAS OF OPERATION and specific TASKS in which pilot competency shall be demonstrated. The FAA will revise this PTS whenever it is determined that changes are needed in the interest of safety. *Adherence to the provisions of the regulations and the practical test standards is mandatory for evaluation of instrument pilot applicants.*”

Although the “training required under 61.65 is general” as the Letter of Interpretation states, the Practical Test Standards for the instrument rating is specific *and mandatory*. The PTS for an instrument rating includes the requirement for training and evaluation on areas of operation including attitude instrument flying, partial panel skills, recovery from unusual flight attitudes and intercept and tracking navigational systems - all of the areas of required training for part 61.129. To “re-train” these items for 10 hours in preparation for a commercial certificate is unnecessary for a pilot with an instrument rating.

The entire premise that “the training given to satisfy the instrument training aeronautical experience of 61.129 may also be used to count toward the aeronautical experience of 61.65 but the opposite is not true” based on the reason that “the training required under 61.65 is general, while the training under 61.129 lists very specific operations that must be accomplished to satisfy the requirement” as the LOI states, is an incomplete evaluation of the training required. The Practical Test Standards for both the instrument rating and commercial certificate must be evaluated in a determination of what specific training elements must be accomplished for a specific certificate or rating.

## **A FAA Designated Examiner has Evaluated Instrument Flying Skill for the Instrument Rated Pilot**

Beyond required training an instrument rated pilot received from an authorized instructor, they have also passed a written and practical exam administered by the FAA. The practical examination includes all areas of operation and tasks set forth in the instrument PTS including basic instrument flight maneuvers, recovery from unusual flight attitudes, intercepting and tracking navigational systems and DME arcs, among others.

In order to obtain an instrument rating from the FAA, the pilot must meet the following criteria on the practical exam:

1. Perform the TASKS specified in the AREAS OF OPERATION for the certificate or rating sought within the approved standards;
2. Demonstrate mastery of the aircraft with the successful outcome of each TASK performed never seriously in doubt;
3. Demonstrate satisfactory proficiency and competency within the approved standards;
4. Demonstrate sound judgment and ADM; and
5. Demonstrate single-pilot competence if the aircraft is type certificated for single-pilot operations.

So, an instrument rated commercial pilot applicant has not only received instrument training on the specific skills set forth in 61.129, they have also demonstrated those skills satisfactorily to an FAA DPE.

### **There are No Instrument Tasks on the Commercial Pilot Practical Test**

A commercial certificate may be issued to pilots that do not possess an instrument rating with a limitation that states, "Carrying passengers in airplanes for hire is prohibited at night or on cross-country flights of more than 50 nautical miles". Regardless of whether a commercial certificate is issued with or without the limitation, there are no instrument skills evaluated during the commercial pilot practical test for single engine airplanes. The only commercial certificate practical test that requires any evaluation of instrument skill at all is for the issuance of a multi-engine commercial certificate without the limitation stated above. In that case the examiner must evaluate an applicant's ability to control the multi-engine aircraft in simulated instrument conditions on one approach with a simulated engine failure. No other area of operation listed in the practical test standards for a commercial certificate evaluates instrument flying. No other commercial certificate evaluates instrument flying skills at all.

The instrument rating practical test is *the* evaluation of instrument flying skills as applicable to a commercial pilot.

### **This Interpretation Increases the Financial Burden to Obtain a Commercial Certificate without Adding a Safety Benefit**

Requiring an additional 10 hours of flight training by an authorized instructor effectively increases the cost of the commercial pilot certificate by an average of \$2100 (\$150 / hour for aircraft and \$60 for instructor on average). This additional cost brings no additional safety benefit since the training required is for skills that have already been proven to an FAA examiner and will not be reevaluated on the commercial checkride.

The Commercial Pilot applicants being turned away by DPEs as a result of this new interpretation have the added costs associated with the DPE's time spent evaluating their paperwork along with the costs for additional re-training and re-scheduling time for the practical exam.

**AOPA asserts that an instrument rated pilot greatly exceeds the 10 hour instrument time requirement set forth in 61.129 and that all training received in pursuit of an instrument rating**

**should be creditable towards the aeronautical experience required for a commercial pilot certificate.**

**The Letter of Interpretation dated October 8, 2010 should be withdrawn immediately.**

Sincerely,

A handwritten signature in cursive script that reads "Kristine Hartzell".

M. Kristine Hartzell  
AOPA  
Manager, Regulatory Affairs