

August 25, 2010

Arizona State Board for  
Private Postsecondary Education  
1400 West Washington Street  
Phoenix, AZ 85007

**RE: AGENDA ITEM VII(A), QUESTION OF REGULATION OF CLASSIFICATIONS OF AIRPLANE PILOT AND INSTRUCTORS UNDER PART 61, OF THE CFR AUGUST 26, 2010 BOARD MEETING**

To Members of the Arizona State Board for Private Postsecondary Education:

The National Air Transportation Association (NATA), the voice of aviation business, is the public policy group representing the interests of aviation businesses before the Congress, federal agencies and state governments. NATA's over 2,000 member companies own, operate and service aircraft and provide for the needs of the traveling public by offering services and products to aircraft operators and others such as fuel sales, aircraft maintenance, parts sales, storage, rental, airline servicing, flight training, Part 135 on-demand air charter, fractional aircraft program management and scheduled commuter operations in smaller aircraft. NATA members are a vital link in the aviation industry providing services to the general public, airlines, general aviation and the military.

NATA appreciates the opportunity to provide these comments on agenda item VII(A), Question of Regulation of Classifications of Airplane Pilot and Instructors under Part 61, of the CFR of the Arizona State Board for Private Postsecondary Education's August 26, 2010 meeting.

It is NATA's understanding that under agenda item VII(A) the board will be deciding whether flight training provided under Title 14 CFR, Part 61 is to be considered a "private vocational program" and, therefore, subject to the board's regulation.

Flight training conducted under Part 61 is a diverse industry in both facilities and purpose. NATA believes that only a small segment of Part 61 training meets the requirements for being deemed a private vocational program.

**REGULATORY BACKGROUND**

The basic regulatory structure of flight training is contained in Title 14 of the Code of Federal Aviation Regulations, Part 61, *Certification; Pilots, Flight Instructors and Ground Instructors*. Part 61 lays out the requirements to receive various pilot certificates (licenses), and also sets forth the activities that are permitted by individuals who have received a pilot's certificate.

There is a second regulatory structure under which flight training may be provided. 14 CFR Part 141 creates what are known as certified pilot schools. These schools are highly regulated by the Federal Aviation Administration (FAA), including being subject to a requirement that 80% of students must pass the FAA licensing exam on the first try.

Under Arizona Revised Statutes 32-3021(f)(7), facilities providing flight training under Part 141 are exempted from the board's regulatory purview; therefore, NATA will focus its comments on training conducted under Part 61.

### **QUALITATIVE ASPECTS OF PART 61 TRAINING**

In Part 61, the FAA maps out the training required, including knowledge and flight experience, for all of the certificates, ratings and endorsements that a pilot can receive. Part 61 also sets forth the requirements for providing instruction by requiring all flight instructors to hold a Certified Flight Instructor (CFI) certificate. Under Part 61, all training leads up to a series of FAA Licensure Exams.

Unlike other instructional areas regulated by the board, the flight training conducted under Part 61 is already subject to significant regulation that ensures that pilots receive the type and quantity of training needed from qualified instructors. The board has no authority, or need, to add or subtract from the training and instructor requirements set forth in Part 61.

### **PROVISION OF TRAINING UNDER PART 61**

Under Part 61, flight training is provided in a wide variety of environments. The most basic of these is an individual CFI providing training to an individual student. In this case, the CFI is simply exercising a privilege granted to him by federal regulation. While there are a number of independent CFIs providing training, many students utilize a flight training facility that operates under Part 61.

A Part 61 flight training facility is simply a business organized to provide better access to aircraft and resources than possible for an individual CFI. These businesses then hire or contract with CFIs to provide the training required under Part 61. In these facilities, students pursue individual certificates, rating or endorsements by receiving training from one of the facilities' CFIs. The student pays the facility for his or her training on a per flight basis, usually computed with hourly charges for aircraft use and CFI time. There is no ongoing commitment between the student and the facility — at any time the student may cease training and retain credit for the training he or she has received, by means of his or her logbook record, without any further financial impact. Lessons are scheduled based upon mutual availability of both the student and the CFI. The student retains both financial and scheduling control in this type of Part 61 training. *It is important to note that this model dominates the vast majority of Part 61 training.*

Recent years have seen the development of Part 61 flight schools that offer programs designed to lead to employment as a pilot and that require upfront payment of tuition. These facilities offer more regimented training than “traditional” Part 61 facilities. The number of facilities operating on this model is still small compared to the overall amount of training provided under Part 61.

#### **CERTIFICATION OF PILOTS UNDER PART 61**

Under Part 61, there are seven basic certificates or licenses available for pilots to pursue; Student, Sport, Recreational, Private, Commercial, Airline Transport Pilot (ATP) and Certified Flight Instructor. Of those seven, fewer than half (Commercial, ATP and CFI certificate) allow a pilot to receive compensation or are required for employment as a pilot. The structure of Part 61 does not require a pilot to declare what certificate he or she is training for nor does it in any way prevent a student from changing his or her aspirations in mid-training. It is this flexibility and open training architecture that differentiates the vast majority of Part 61 training from any other type of instruction regulated by the board.

#### **RELEVANT STATUTES**

For a flight training facility to fall under the regulatory authority of the board, it must offer a “private vocational program.” A.R.S. 32-3001 defines private vocational program as:

*“An instructional program which includes a course or group of courses as defined in 15-101 for which a student does not earn a degree and which is designed to provide or is advertised as providing a student with sufficient skills for entry into a paid occupation...”*

A.R.S. 15-101 defines a course as:

*“Organized subject matter in which instruction is offered within a given period of time and for which credit toward promotion, graduation or certification is usually given.”*

#### **CONCLUSION**

The vast majority of flight training performed under Part 61 is done by individual CFIs or traditional flight training facilities not charging any upfront tuition. This provision of flight training is unlike any other instructional program regulated by the board. NATA believes that, due to the flexibility retained by the student, both in lesson scheduling and completion time, and the fact that there is no ongoing financial obligation other than for one day’s training, training conducted by individual flight instructors and facilities that do not charge up front tuition fails to meet any of the requirements that would trigger regulation by the board. In fact, NATA believes the only possible type of flight training that falls under the board’s regulatory authority is training pursued under Part 61 where the student is charged up-front tuition and is pursuing a certificate that would allow the student to be employed as a pilot.

NATA respectfully requests that the board adopt these conclusions when deciding whether to incorporate flight training performed under Part 61 under its regulatory purview.

NATA and its member companies thank the board for considering these comments.

Respectfully,

A handwritten signature in black ink, appearing to read "Michael France". The signature is fluid and cursive, with the first name "Michael" being more prominent than the last name "France".

Michael France  
Director, Regulatory Affairs