

## **Pilot Counsel: Logging pilot-in-command time**

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There is a subtle but important legal distinction between logging pilot-in-command time and acting as pilot in command. We now have an interpretation by the FAA Chief Counsel that seeks to explain this distinction in a fairly typical situation in which many of us could find ourselves.

Here is the situation presented. Both Pilot A and Pilot B take an IFR flight; that is, one under instrument flight rules. Under the regulations, only one flight crewmember is required for the flight—both by the aircraft type certification and by the rules governing this instrument flight. Both are private pilots with ratings that are appropriate to the aircraft being flown, but only Pilot A has an instrument rating. Pilot A undertakes to act as PIC for the flight since he is the one qualified for instrument flight. For a portion of the flight, Pilot B, who does not hold an instrument rating, flies the aircraft—or in the jargon of the regulations, is the sole manipulator of the controls. Here are the two questions asked of the FAA: May Pilot B log PIC time for the portion of the flight during which Pilot B is the sole manipulator of the controls? May Pilot A, who is acting as PIC for the entire flight and therefore is a required flight crewmember, also log PIC time for the portion of the flight during which Pilot B is the sole manipulator of the controls?

Let's start with the fundamental proposition that practically all pilots understand: A private pilot (as well as a sport, recreational, or commercial pilot) may only log PIC time for the time during which that pilot is "the sole manipulator of the controls of an aircraft for which the pilot is rated or has privileges" [FAR 61.51(e)(1)(i)]. Where the interpretation gets more subtle is where it states that "rated," as used in this provision, refers to the pilot holding the appropriate ratings (category, class, and type if a type rating is required) for the aircraft being flown,

not for the conditions of flight. Pilot B, even though he does not hold an instrument rating, is appropriately rated for the aircraft being flown. Pilot B is not rated for the conditions of flight, which requires an instrument rating. According to the interpretation, Pilot B may log as PIC the portion of the time during which he is the sole manipulator of the controls.

With respect to the second question, the interpretation is not as generous to pilots. The interpretation concludes that Pilot A may not log PIC time for the portion of the flight during which Pilot B is the sole manipulator of the controls and is logging PIC time. That's because Pilot A, a private pilot, is not handling the controls at that time, as is required by FAR 61.51(e)(1)(i)—even though Pilot A is acting as PIC for the whole flight and as such has the final authority and responsibility for the operation and safety for the duration of the flight. This is a part of the interpretation that has not been commonly understood.

In analyzing Pilot A's situation, the interpretation emphasizes another fundamental that is understood by pilots, and is worth repeating here: To act as PIC a pilot must not only be properly rated for the aircraft being flown, but must also be properly rated and authorized to otherwise conduct the flight. In this case of an IFR flight, being properly rated and authorized would include having an instrument rating. So, clearly Pilot A may generally and usually log the flight time during which he is acting as PIC—but with this important and usually limited exception, as this interpretation tells us, of the time when Pilot B is the sole manipulator of the controls and is logging PIC time.

To be clear about the relative status of Pilots A and B, even though Pilot B properly may log PIC time for a portion of the flight, Pilot B may not act as PIC without an instrument rating. Therefore, Pilot B is subject to the authority of the acting PIC, Pilot A. This interpretation deals with a specific situation. The rule is different if more than one pilot is required. In the situation put to the FAA, only one pilot was required, which is the situation in most general aviation light-aircraft operations. However, FAR 61.51(e)(1)(iii) allows the pilot acting as PIC to

log PIC time, regardless of which pilot is manipulating the controls, if more than one pilot is required under the type certification of the aircraft (typically large and jet aircraft) or the regulations under which the flight is conducted (commercial operations). And this interpretation does not deal with flight instruction undertaken for FAA certification or rating. Under appropriate circumstances, both a certificated flight instructor and a student pilot may log PIC time under FAR 61.51(e)(3) and (4).

I would like to find a way for Pilot A to be able to log all of the time he is acting as PIC. We are appreciative to the FAA Chief Counsel for offering his insights into this complex and subtle area of the law. No doubt, we will continue to wrestle with the implications of logging time versus acting as pilot in command in other factual situations.