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

Office of the Chief Counsel

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

NOV 22 2010

John Creech
[redacted]

Dear Mr. Creech:

This responds to your request for an interpretation concerning 14 CFR §61.167, the privileges of an airline transport pilot (ATP) certificate, as it relates to instruction by the ATP. The regulation states in pertinent part:

61.167 Privileges.

(b) An airline transport pilot may instruct --

(1) Other pilots in air transportation service in aircraft of the category, class, and type, as applicable, for which the airline transport pilot is rated and endorse the logbook or other training record of the person to whom training has been given;

(2) In flight simulators, and flight training devices representing the aircraft referenced in paragraph (b)(1) of this section, when instructing under the provisions of this section and endorse the logbook or other training record of the person to whom training has been given;

(3) Only as provided in this section, unless the airline transport pilot also holds a flight instructor certificate, in which case the holder may exercise the instructor privileges of subpart H of part 61 for which he or she is rated; and

(4) In an aircraft, only if the aircraft has functioning dual controls, when instructing under the provisions of this section.

To answer your questions, which are set out below, we also consider 14 CFR §61.3 (d)(3) which states in pertinent part:

(3) A flight instructor certificate issued under this part is not necessary—

(ii) Under paragraph (d)(2) of this section, if the training is given by the holder of an airline transport pilot certificate with a rating appropriate to the aircraft in which the training is given, provided the training is given in accordance with the privileges of the certificate and

conducted in accordance with an approved air carrier training program approved under part 121 or part 135 of this chapter.

Question 1. What is the intent of the 61.167(b)?

Answer 1. Section 61.167(b) authorizes an ATP, who does not hold a flight instructor certificate, to give flight instruction only if the ATP and pilot are engaged in air transportation service. The authorization is limited in scope.

Question 2. May a pilot who holds an ATP certificate and a BE-300 type rating give dual instruction in a BE-300 aircraft to a commercial multiengine pilot with an instrument rating in "air transport service," if the ATP does not have a CFI and the flight is to be conducted under part 91 operating rules? If so, could this time count towards the 1500 hour total time requirement for the commercial pilot to obtain an ATP certificate?

Answer 2. We spoke to you by phone and confirmed that the flight described in your question is not part of an FAA approved air carrier training program approved under part 121 or part 135. Since the flight is not part of an FAA air carrier training program approved under part 121 or part 135, that fact is dispositive of whether the ATP, who does not have a CFI, may give flight instruction,

While section 61.167(b)(2) authorizes an ATP to give instruction when the ATP does not hold a CFI, the ATP would have to comply with both §61.167(b)(2) and §61.3(d)(3)(ii). According to §61.3(d)(3)(ii), the instruction must be ". . . conducted in accordance with an approved air carrier training program approved under part 121 or part 135 . . . ." In your questions, the ATP is not a CFI and the flight is not part of an FAA approved air carrier training program approved under part 121 or part 135. As a result, the ATP may not instruct the commercial pilot. Since the ATP is not authorized to provide dual instruction, the flight time may not be counted as instructional time.

Question 3. What is the definition of "air transport service" as found in 14 CFR §61.167?

Answer 3. The phrases "air transport service" or "air transportation service" are not defined in the federal aviation regulations. See 14 CFR § 1.1, general definitions, and 14 CFR § 61.1, applicability and definitions. However, when read together, §61.167(b)(2) and §61.3(d)(3) provide an explanation that "air transportation service" is tied to an approved air carrier training program approved under part 121 or part 135.

This response was prepared by Cecile O'Connor, Attorney, Regulations Division, and coordinated with the Certification and General Aviation Operations Branch, AFS-810, and the Air Carrier Training Branch, AFS-210, of the Flight Standards Service. We hope this response has been helpful to you. If you have additional questions regarding this matter, please contact us at your convenience at 202 267-3073.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations Division, AGC-200

cc: David Donnell, ASW-7E