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AOPA Flight Training Magazine
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Legal Briefing: Q&A-Safety issues at hand

By Kathy Yodice

Q: I am a CFI and I am no longer working with a student after I would not give him a night flying endorsement. This student still has endorsements from me that I put in his logbook while we were training together. Can the student continue to fly under the authority of my endorsements?

A: Nothing in the FAA's regulations or guidance renders an instructor's endorsements void or invalid because the instructor and student are no longer working together. There does not seem to be any mechanism in the FAR or FAA guidance for an instructor to rescind or terminate an endorsement that a CFI gave after the student met the requirements of the FAR. The FARs provide that endorsements are valid until they expire to the extent of the conditions or limitations. I'm not sure why you would want your endorsements to be rendered invalid since presumably they were given only after the student had demonstrated that he had satisfactory knowledge for the operation, with any limitations or conditions that you felt appropriate at the time to ensure the safety of any flight conducted under that endorsement. If you have learned of something new that affects the student's ability to safely fly as you have previously endorsed, then this information may need to be shared with the FAA so that appropriate action can be taken. ■

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Legal Briefing

By Kathy Yodice

Q: I'm a new CFI, and I understand that CFIs have to go through security awareness training. When do I have to do this training and how often? And, will the FAA be checking me on this?

A: The requirement to undergo initial and recurrent security awareness training is a TSA regulation, not an FAA regulation. TSA's regulations requires "flight school" to ensure that its employees receive initial and recurrent security awareness training. The initial training must be received within 60 days of being hired, and the recurrent training is due every year, in the same month as the month of the initial training. TSA's regulations define "flight school" to include a flight instructor certificated under Part 61, although the regulations requiring the training seem to use the term to mean an actual flight school, including that the flight school give the CFI a document stating that the training was given and that the flight school maintain a copy of that document. Active independent or solo CFIs should comply with these training requirements. The regulations also require that the flight school permit inspection of these training records by either TSA or FAA during business hours. ■

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AOPA Flight Training Magazine
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Legal Briefing

By Kathy Yodice

Q: I'm just starting to learn to fly, and we don't have an ELT in our aircraft. Are we doing something wrong or unsafe?

A: FAR 91.207 requires that U.S.-registered aircraft be equipped with an approved and functioning emergency locator transmitter, but there are several exceptions to this requirement. The reason for the law requiring an ELT was to give searchers an ability to find downed aircraft, so the exceptions in the regulation recognize that it is unreasonable to require the installation of an ELT on aircraft, that can be promptly located in the event of an emergency. The exception that may apply in your local training situation is FAR 91.207 (f)(3) that exempts an aircraft from having an ELT "while engaged in training operations conducted entirely within a 50-nm radius of the airport from which such local flight operations began." The FAA

contemplated that an operation, which is confined to a specific geographic location in the vicinity of an airport, would, as a practical matter, obviate the need for the device. If your CFI is taking you to the practice area near the airport, training you on the basic maneuvers and flight characteristics of the aircraft, you probably fall in this exception. ■

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AOPA Flight Training Magazine

Volume 22 Number 1

Legal Briefing: Can I get slapped for an old violation?

By Kathy Yodice

Q: I've been a pilot for more than 25 years, and I have maintained my logbook all those years. Even though I only fly for personal pleasure and don't really need to keep track of my hours, I enjoy keeping track of all of my flight hours and activities for nostalgic reasons. And, of course, I use it to keep track of my currency requirements. In a nostalgic moment, I was reviewing my logbook and happened across a time period when it looks like I flew for a couple of months beyond the expiration of my flight review. This happened almost 10 years ago. Could the FAA take a violation action against me now?

A: When the FAA takes a legal enforcement action against an airman for violations of the FARs, the airman is entitled to appeal the FAA's action to the National Transportation Safety Board. The NTSB has a procedural rule called "the stale complaint rule" which provides that the FAA's legal office must notify you of the FAA's intention to take an action against you within six months of the date of the alleged infraction, or the FAA's action will be dismissed as stale.

There are a couple of exceptions to the rule. One exception is when the FAA alleges that an airman lacks qualifications requiring the revocation of his or her airman certificate(s). The other exception is for "good cause," which is not a standard that is specifically defined but it is an exception that is often relied upon by the FAA when it does not find

out about the infraction contemporaneous with its occurrence. Hence, in your circumstance, the FAA would not know that you flew without a current review until it reviewed your logbook and found it for themselves, maybe not until years later—if at all—and maybe only because someone reported it to them, or an FAA inspector was reviewing your logbook after an accident or incident or before giving you a checkride.

Even then, the FAA doesn't have another six months to act; rather, the FAA must act faster, putting your case ahead of other cases, and notify you of its intention to take legal enforcement action in a more expeditious manner. The burden is on the FAA to establish that it acted with due diligence in moving forward with your case without delay once the facts were discovered.

So, the FAA is precluded in some cases and discouraged in other cases from taking action on a matter that happened long ago. In those instances when the FAA has the option of proceeding based on events that occurred years ago, the FAA has to exercise appropriate prosecutorial discretion in assessing its present ability to prove the violations and any necessity in doing so at that late date. ■