



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

Office of the Chief Counsel

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

SEP 25 2018

Stephen J. Williams
[REDACTED]
[REDACTED]

Re: Request for legal interpretation of 14 CFR § 61.3

Dear Mr. Williams:

This is in response to your letter dated April 16, 2018, in which you sought a legal interpretation of 14 C.F.R. § 61.3 regarding the operation of gyroplanes under instrument flight rules (IFR) or in weather conditions less than the minimums prescribed for visual flight rules (VFR).

Section 61.3(e) prohibits a person from acting as pilot in command (PIC) of a civil aircraft under IFR or in weather conditions less than the minimums prescribed for VFR flight unless that person meets one of the requirements in § 61.3(e)(1) through (4). Section 61.3(e)(1) requires a person to hold the appropriate aircraft category, class, type (if required), and instrument rating on that person's pilot certificate for any airplane, helicopter, or powered-lift being flown. Under § 61.3(e)(2), a person must hold an airline transport pilot certificate with the appropriate aircraft category, class, and type rating (if required) for the aircraft being flown.¹ Section 61.3(e)(3) requires a person acting as PIC of a glider to hold a pilot certificate with a glider category rating and an airplane instrument rating. Lastly, § 61.3(e)(4) requires a person acting as PIC of an airship to hold a commercial pilot certificate with a lighter-than-air category rating and airship class rating.

In your letter, you state that there is no regulation that precludes a certificated pilot with a rotorcraft gyroplane rating from operating a gyroplane under IFR or in weather conditions below VFR minimums. You therefore seek an interpretation that an instrument rating is not required to operate a gyroplane under IFR. In support of your position, you state that § 61.3(e)(4) provides an exception to the requirement for a pilot to hold an instrument rating. Section 61.3(e)(4) requires a pilot operating an airship under IFR or in weather conditions less than the minimums prescribed for VFR flight to hold a commercial pilot certificate. You further note that § 61.129(d)(3)(i) requires a candidate for a commercial pilot certificate with a gyroplane rating to receive instrument flight training, which you contend would not be

¹ The FAA notes that it does not issue ATP certificates with gyroplane class ratings. See 14 CFR § 61.161. In FAA guidance, the FAA states that "[a] gyroplane class rating may be added to an ATP certificate, but only with recreational, private, or commercial pilot privileges." FAA Order 8900.1, Vol. 5 Airman Certification, Ch. 2 Title 14 CFR Part 61 Certification of Pilots and Flight Instructors, Sec. 18 Conduct an Airline Transport Pilot Certification, Including Additional Category/Class Ratings.

possible if § 61.3(e) were interpreted as prohibiting gyroplanes from operating in IFR or in conditions less than VFR minimums. Lastly, you point out that the FAA does not issue instrument ratings for gyroplane pilots.²

Under § 61.3(e), a person is prohibited from acting as PIC of a “civil aircraft” under IFR or in weather conditions less than the minimums prescribed for VFR flight unless that person meets one of the pilot certificate and rating requirements prescribed in § 61.3(e)(1) through (4). The prohibition in § 61.3(e) applies to all “civil aircraft,” and the requirements in § 61.3(e)(1) through (4) do not address gyroplanes.³ Therefore, the FAA interprets § 61.3(e) as prohibiting a person from acting as PIC of a gyroplane under IFR or in weather conditions less than the minimums prescribed for VFR flight.

Your assertion that § 61.3(e)(4) is an exception to the requirement for a pilot to hold an instrument rating is mistaken. Section 61.3(e) is a prohibition unless one of the requirements in subparagraphs (e)(1) through (4) are met. Therefore, § 61.3(e)(4) is not an exception to any requirement. Section 61.3(e)(4) contains the requirement for persons seeking to operate as PIC of an airship under IFR or in weather conditions less than VFR minimums. Because instrument ratings are not issued for airships,⁴ § 61.3(e)(4) requires a person acting as PIC of an airship under IFR or in weather conditions less than VFR minimums to hold a commercial pilot certificate with a lighter-than-air category rating and airship class rating. When the FAA first proposed this requirement in 1966,⁵ the FAA explained that separate instrument ratings are not issued to lighter-than-air pilot applicants.⁶ However, an applicant

² In your letter, you stated that if § 61.3(e) were now interpreted as providing a blanket ban on instrument flight in any category of aircraft not specifically addressed in § 61.3(e)(1) through (4), that such an interpretation would amount to a rule adopted by the FAA without first providing notice and an opportunity for comment. In response to this assertion, the FAA first proposed the version of the requirements as they exist today in 1972. *NPRM, Certification: Pilots and Flight Instructors*, 37 FR 6012, 6018 (Mar. 23, 1972). After an opportunity for comment, the FAA finalized the requirements in 1973. *Final Rule*, 38 FR 3156, 3162 (Feb 1, 1973). As explained in the interpretation, § 61.3(e) expressly prohibits a person from acting as PIC of a civil aircraft under IFR or in weather conditions less than the minimums prescribed for VFR flight unless that person meets one of the pilot certificate and rating requirements in § 61.3(e)(1) through (4). Since the 1973 final rule, the requirements of § 61.3(e)(1) through (4) have been category and/or class specific and have omitted gyroplanes. Persons had ample opportunity to comment when the requirements were first proposed.

³ Section 1.1 defines “civil aircraft” as aircraft other than public aircraft.

⁴ The FAA notes that in 1995, the FAA proposed to establish an instrument rating for airships. *NPRM, Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules*, 60 FR 41160, 41193 (Aug. 11, 1995). However, the FAA decided to withdraw the proposal and continue to require a pilot to hold a lighter-than-air commercial pilot certificate with an airship rating to operate airships under IFR. The FAA concluded that operational requirements and accident/incident data did not establish a sufficient safety justification for increased regulatory or economic burdens resulting for the proposed rule change. *Final Rule, Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules*, 62 FR 16220, 16238 (Apr. 4, 1997).

⁵ *NPRM, Airman and Ground Instructor Administrative Requirements; Clarification*, 31 FR 5324, 5325 (Apr. 2, 1966).

⁶ In addition to part 61 not containing provisions for separate instrument ratings for the lighter-than-air category airship class, the FAA explained that separate instrument ratings were not issued to lighter-than-air pilot applicants under the predecessor portions of part 22 of the Civil Air Regulations. 31 FR at 5325.

for a commercial pilot certificate with a lighter-than-air category and airship class rating is examined through written examinations, and in the flight test, with respect to instrument competence. The FAA explained that it considers the instrument rating to be embedded in the commercial lighter-than-air pilot certificate itself in the case of airship class.⁷ To obtain a commercial pilot certificate with a lighter-than-air category rating and airship class rating, § 61.129(g)(3) requires a pilot to have obtained 40 hours of instrument time, which includes “instrument training” using a view-limiting device for attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems.

Your assertion that § 61.129(d)(3)(i) is similar to § 61.129(g)(3)(i) in that it requires a candidate for a commercial pilot certificate with a gyroplane rating to receive “instrument training” is also mistaken. Section 61.129(d)(3)(i) requires a candidate for a commercial pilot certificate with a gyroplane rating to receive 2.5 hours of training on the “control and maneuvering of a gyroplane solely by reference to instruments using a view-limiting device including attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems.”⁸ As evident from several legal interpretations, the FAA has distinguished training on the “control and maneuvering of an [aircraft] solely by reference to instruments” from “instrument training.”⁹ Unlike “instrument training,” flight training on the “control and maneuvering of an [aircraft] solely by reference to instruments” may be provided by a flight instructor who does not hold an instrument rating on their flight instructor certificate.¹⁰ In addition, the training required by § 61.129(d)(3)(i) must be conducted under VFR.¹¹ Therefore, the prohibition on operating a gyroplane in IFR or in weather conditions less than VFR minimums does not prevent a person from obtaining the training required by § 61.129(d)(3)(i).

⁷ *Id.*

⁸ The FAA initially proposed, in 1995, to require applicants for a commercial pilot certificate with a gyroplane rating to obtain 5 hours of “instrument training in a gyroplane.” NPRM, *Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules*, 60 FR 473604 (Aug. 11, 1995). However, commenters expressed concern that there are no gyroplanes equipped for IFR flight, no gyroplane instrument ratings, and no gyroplane instrument instructors. As a result, the FAA revised the proposed requirement to require 5 hours of “instrument training in an aircraft.” Final Rule, *Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules*, 62 FR 16220, 16269 (Apr. 4, 1997). In 2009, however, the FAA revised the aeronautical experience requirement for gyroplanes, in § 61.129(d)(3)(i), to require 2.5 hours of training on the control and maneuvering of an aircraft solely by reference to the instruments. The FAA explained that gyroplanes are not certificated for instrument flight; however, this minimal amount of training is intended to provide pilots with some training about flying in instrument conditions to make them better skilled and alert for instrument flight conditions. Final Rule, *Pilot, Flight Instructor, and Pilot School Certification*, 74 FR 42500, 42532 (Aug. 21, 2009).

⁹ Legal Interpretation to Joseph S. Jablecki, Ph.D. (Jun. 30, 2016); Legal Interpretation to Taylor Grayson (Jul. 6, 2010); Legal Interpretation to Taylor Grayson (Jan. 4, 2010).

¹⁰ *Id.*

¹¹ For the reasons discussed in this legal interpretation, operating a gyroplane under IFR would be a violation of §§ 61.3(e) and 91.9(a).

Lastly, you are correct in your assertion that the FAA does not issue gyroplane instrument ratings. Section 61.5 lists the certificates and ratings issued by the FAA under part 61. The FAA issues instrument ratings on private and commercial pilot certificates only for airplanes, helicopters, and powered-lift. 14 CFR § 61.5(b). In addition, the FAA does not issue gyroplane instrument ratings on flight instructor certificates. 14 CFR § 61.5(c). However, the fact that the FAA does not issue gyroplane instrument ratings does not mean that instrument ratings are not required to operate a gyroplane under IFR or in weather conditions less than the minimums prescribed for VFR flight.

Furthermore, § 91.9(a) states, in pertinent part, that “no person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual, markings, and placards.” The operating limitations include the type of operations an aircraft is approved for, such as VFR or IFR. Therefore, a person may not operate an aircraft under IFR unless that aircraft is approved for IFR operations.¹² Currently, there are no gyroplanes type certificated for IFR operations. Therefore, if a person were to operate a gyroplane under IFR today, that person would be in violation of §§ 61.3(e) and 91.9(a).

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Katie Patrick, Attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the General Aviation and Commercial Division of the Flight Standards Service.

Sincerely,



Lorelei Peter
Assistant Chief Counsel for Regulations, AGC-200

¹² The FAA notes that the aircraft would also be required to meet the instrument and equipment requirements for IFR as prescribed in § 91.205(d).

STEPHEN J. WILLIAMS

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16 April 2018

Charles M. Trippe, Jr., Esq.
Chief Counsel
Federal Aviation Administration
800 Independence Avenue SW
Washington, DC 20591

Dear Attorney Trippe,

Request for legal interpretation regarding
FAR § 61.3 – Requirement for certificates, ratings, and authorizations

Like most of the administration's regulations, 14 CFR § 61.3 is restrictive in nature. An action is permitted unless specifically limited by a rule. For example, § 61.3(a) provides that "[n]o person may serve as a required pilot flight crewmember of a civil aircraft of the United States, unless that person..." The remaining subsections of § 61.3 are similarly phrased.

Subsection (e) of § 61.3 specifically requires that:

(e) *Instrument rating.* No person may act as pilot in command of a civil aircraft under IFR or in weather conditions less than the minimums prescribed for VFR flight unless that person holds:

- (1) The appropriate aircraft category, class, type (if required), and instrument rating on that person's pilot certificate for any airplane, helicopter, or powered-lift being flown;
- (2) An airline transport pilot certificate with the appropriate aircraft category, class, and type rating (if required) for the aircraft being flown;
- (3) For a glider, a pilot certificate with a glider category rating and an airplane instrument rating; or

STEPHEN J. WILLIAMS

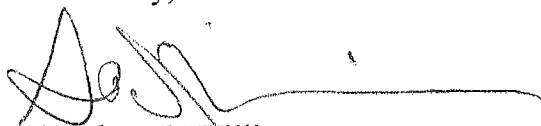
(4) For an airship, a commercial pilot certificate with a lighter-than-air category rating and airship class rating.

Subsection (e) only provides limitations on flight under IFR flight rules or in weather conditions less than VFR minimums in airplane and glider category aircraft, rotorcraft helicopter and lighter-than-air airship class aircraft. The subsection provides no such limitation for flight in the various other categories and classes of aircraft for which the administration issues ratings. Therefore, there is no regulation, for example, which precludes a certificated pilot with a rotorcraft gyroplane rating from piloting a gyroplane under IFR flight rules or in weather conditions below VFR minimums.

In support of the interpretation that an instrument rating is not required to pilot a gyroplane in instrument meteorological conditions without specifically holding an instrument rating, it is noteworthy that § 61.3(e) itself provides an exception to the requirement that a pilot hold an instrument rating. Subpart (4) only requires that an airship pilot hold a commercial certificate. The subpart is silent on the requirement to also hold an instrument rating and presumably no such rating is required for instrument flight.¹

Finally, the administration currently does not issue instrument ratings for gyroplane pilots. See § 61.5(c)(4).² Consequently, if § 61.3(e) were now interpreted as providing for a blanket ban on instrument flight in any category not specifically addressed in that subsection, then such an interpretation would amount to a rule entered by the administration without first providing notice of what had been intended, an opportunity for public comment and a statement of the administration's reasoning in imposing such a rule.

Sincerely,



Stephen J. Williams

¹ Indeed, just as § 61.129(g)(3)(i) requires that a candidate for a commercial airship rating receive some instrument flight training, § 61.129(d)(3)(i) similarly requires that a candidate for a commercial gyroplane rating receive instrument flight instruction. "Instrument training" specifically includes instruction under actual instrument conditions. See FAR § 61.1(b). This would obviously not be possible in a gyroplane if § 61.3(e) were interpreted as providing a blanket ban on flight in conditions which were below VFR minimums.

² Other ICAO jurisdictions do issue gyroplane instrument ratings. See, e.g., Australian CASR § 61.890(6) which provides for the issuance of a gyroplane instrument endorsement.