



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

Office of the Chief Counsel

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

**AUG - 3 2017**

William W. Grannis  


Re: Clarification of the Exceptions in 14 CFR § 119.1(e)

Dear Mr. Grannis:

This is in response to your letter dated February 28, 2017, in which you sought clarification of 14 C.F.R. § 119.1(e), which provides exceptions from the certification requirements of part 119.

In general, when a flight involves the carriage of persons or property for compensation or hire, the operator must hold a part 119 air carrier or commercial operator certificate and operate such flights under part 121 or 135 rules.<sup>1</sup> However, § 119.1(e) excepts from the certification requirements of part 119 several categories of operations that involve the use of an aircraft for compensation or hire, such as student instruction, training flights and nonstop commercial air tours, provided certain conditions are met.<sup>2</sup> Operations described in § 119.1(e) may be conducted without a part 119 certificate under part 91 rules.

In your letter, you asked several questions regarding the exceptions for “student instruction,” “nonstop commercial air tours,” and “training flights,” which are described in § 119.1(e)(1) through (e)(3), respectively.

First, you asked the FAA to distinguish the “student instruction” exception in § 119.1(e)(1) from the “training flights” exception in § 119.1(e)(3). You explained that part 61 does not use the term “student instruction” and asked whether the FAA interprets “student instruction” in the context of part 61. You also noted that § 61.1 and § 119(e)(1) differ in that § 61.1 defines only “flight training,” but § 119.1(e)(1) uses the terms “instruction” and “training flights.” Additionally, you asked whether instruction received from a commercial pilot or airline transport pilot in particular flight operations, such as ferry flights, aerial work operations, banner towing, aerial photograph or survey, or firefighting, would fall under the “student instruction” exception of § 119.1(e)(1).

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<sup>1</sup> See Legal Interpretation to Doug McQueen from Mark W. Bury, Acting Assistant Chief Counsel for International Law, Legislation, and Regulations (Apr. 16, 2013); Legal Interpretation to Gregory S. Winton from Mark W. Bury, Acting Assistant Chief Counsel for International Law, Legislation, and Regulations (Feb. 14, 2013).

<sup>2</sup> The FAA notes, however, that persons conducting operations under § 119.1(e) must hold a commercial pilot certificate. See 14 CFR §§ 61.123 and 61.133.

Based on our research, the terms “student instruction” and “training flights,” which are used in § 119.1(e)(1) and (3), are outdated nomenclature. When the FAA replaced the term “flight instruction” with “flight training” throughout part 61 in 1997,<sup>3</sup> it did not update the terminology used in § 119.1(e) for consistency. The terms “student instruction” and “training flights” have existed in the regulations for over fifty years. The “student instruction” exception first appeared in § 42.0-3, which was adopted on March 25, 1954.<sup>4</sup> Section 42.0-3 was a provision in Civil Aeronautics Manual 42, which contained CAA interpretations and policy applicable to Civil Air Regulation (CAR) § 42.0 (the predecessor regulation to §§ 42a.0, 135.1, and 119.1).<sup>5</sup> The “training flights” exception first appeared in § 135.1, which replaced CAR § 42a.0, on March 4, 1964.<sup>6</sup> The FAA notes that the exceptions listed in § 135.1 were later recodified into § 119.1(e). The CARs did not define “student instruction” or “training flights,” and the historical preambles were silent as to intent.

Because “student instruction” existed as an exception for several years before the Civil Aeronautics Board adopted the “training flights” exception, the FAA interprets “student instruction” broadly as referring to an operation in which a person receives flight training from an authorized instructor for the purpose of obtaining a certificate, privilege, rating, or authorization under part 61. Section 61.1 defines “flight training” as that training, other than ground training, received from an authorized instructor in flight in an aircraft. A person who holds only a commercial pilot or ATP certificate may not conduct flight training for purpose of satisfying the “student instruction” exception in § 119.1(e)(1) because he or she does not hold a flight instructor certificate.<sup>7</sup>

The FAA interprets “training flights” described in § 119.1(e)(3) as referring to operations in which a person receives training for the purpose of satisfying a training requirement outside of part 61, such as the crewmember training requirement of § 91.313. Therefore, flight

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<sup>3</sup> Final Rule, “Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules,” 62 FR 16220 (Apr. 4, 1997).

<sup>4</sup> Final Rule, “Air Taxi Operator Certificate,” 19 FR 1601 (Mar. 25, 1954). In this final rule, the FAA listed the provisions of part 42 and Civil Aeronautics Manual 42, which were applicable to the certification and operation of air taxi service. Section 42.0 prescribed the applicability requirements for part 42. Section 42.0-3, *Operations for which an air taxi operator certificate is not required*, was a CAA interpretation which applied to § 42.0. Section 42.0-3(a) excepted student instruction from coming within the meaning of carriage by aircraft of persons or property as an air taxi operator.

<sup>5</sup> See Final Rule, “Commuter Operations and General Certification and Operations Requirements,” 60 FR 65832 (Dec. 20, 1995) In 1995, the FAA adopted part 119. Several part 121 and 135 provisions were recodified into part 119.

<sup>6</sup> Final Rule, “Miscellaneous Amendments,” 29 FR 2988 (Mar. 5, 1964) (adopting part 135 to apply to air taxi operators and commercial operators using small aircraft). Part 135 replaced the air taxi provisions of part 42a.

<sup>7</sup> See 14 CFR. 61.133, 61.167, and 61.195. The FAA notes that § 61.167(a)(2) contains a privilege allowing a person who holds an ATP certificate to instruct other pilots in air transportation service. However, as explained in a Legal Interpretation to John Creech from Rebecca MacPherson, Assistant Chief Counsel for Regulations Division (Nov. 2, 2010), 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...”

crewmember training in special purpose operations, such as crop dusting, seeding, spraying, and banner towing, would fall under the “training flights” exception of § 119.3(e)(3).

Next, you asked whether discovery flights, introductory flights, orientation flights, and demonstration flights may be conducted by a commercial pilot or ATP and whether these flights would fall under the “student instruction” or “training flights” exceptions described in § 119.1(e). Alternatively, you asked if discovery flights, introductory flights, orientation flights, and demonstration flights are not excepted under § 119.1(e)(1) and (e)(3), would these flights fall under the “nonstop commercial air tours” exception in § 119.1(e)(2). You presented a list of hypothetical flights, including a flight given to a child as a birthday gift, a flight in which an individual only wants to experience flying locally in a small general aviation airplane, a flight in which an individual only wants to fly to fulfill a “bucket list” item, and an orientation flight scheduled for a customer by a third party, such as Groupon.

Discovery flights, introductory flights, orientation flights, and demonstration flights are operations involving the carriage of persons for compensation or hire. Therefore, these flights may be conducted by a person who holds a commercial pilot certificate or an ATP certificate.<sup>8</sup> However, in order to fall under the “student instruction” exception of § 119.1(e)(1), the purpose of the flight must be student instruction and the instruction must be provided by an authorized instructor, as discussed above. “If no flight instruction is involved, the flight is a commercial operation for which a part 119 certificate is required.”<sup>9</sup> Similarly, in order to fall under the “training flights” exception of § 119.1(e)(3), the purpose of the flight must be training to satisfy a regulatory requirement outside of part 61.<sup>10</sup>

In the hypothetical scenarios you presented in your letter, the persons being carried for compensation or hire are not interested in flight training. It is therefore unlikely that the purpose of these flights would be student instruction. Furthermore, because the flights you describe are introductory flights, it is unlikely that the persons would be receiving flight training for the purpose of satisfying a training requirement outside of part 61. However, the hypothetical flights you described may still be excepted from the part 119 certification requirements under § 119.1(e)(2), which provides an exception for nonstop commercial air tours, provided certain conditions are met. Section 110.2 defines “commercial air tour” as “a flight conducted for compensation or hire in an airplane or helicopter where a purpose of the flight is sightseeing.” Section 110.2 lists eight factors in determining whether a flight is a commercial air tour. The regulations, however, do not require an operation to meet a certain

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<sup>8</sup> See 14 CFR 61.133 and 61.167.


<sup>9</sup> Legal interpretation to Daniel Murphy from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations, (Dec. 22, 2008).

<sup>10</sup> As explained in previous legal interpretations, if the flight operation becomes “dual purpose,” the exception in § 119.1(e) will no longer apply. Legal Interpretation to Samuel T. Ragland from Lorelei Peter, Deputy Assistant Chief Counsel for Regulations (May 5, 2015); Legal Interpretation to Ray Bonilla from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Sept. 7, 2011)

of number of factors in order to be considered a commercial air tour.<sup>11</sup> If your flight operation satisfies the definition of “commercial air tour,” it may be conducted under the nonstop commercial air tour exception of § 119.1(e)(2), provided it begins and ends at the same airport; is conducted within a 25-statute mile radius of that airport; and complies with a Letter of Authorization issued under § 91.147.

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

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<sup>11</sup> See Legal Interpretation to Michael S. Mason from Rebecca B. MacPherson, Assistant Chief Counsel for International Law, Legislation, and Regulations (Oct. 23, 2012).

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February 28, 2017

Dear General Counsel:

This letter requests interpretation of 14 C.F.R. §119.1 Applicability, in part (c)(1) Student instruction and (c)(3) ... or training flights, the difference or distinction between "student instruction" and "flight training" exemptions. Additionally, whether the words "Discovery Flight, Introductory Flight, Orientation Flight, and Demonstration Flight" for marketing of local, short time flight, typically 30 minutes, are exempt from 14 C.F.R. §119.1 (e) with respect the scenarios provided below.

In the body of Title 14 → Chapter I, particularly Part 61, I was unable to find the words "student instruction." There is no defining adjective, i.e., ground or flight, preceding "instruction." Does one interpret the words to mean "student instruction" in the context of the definitions in Part 61.1. A student, part 61, is one who is *pursuing* a Sport, Recreational or Private pilot certificate and more generally, a person already a certificated pilot seeking additional Category, Class or other rating, and those seeking endorsement following additional training required for operating complex airplanes, high-performance, pressurized or tailwheel airplanes.

14 C.F.R. §1.1, *Flight training* means that training, other than ground training, received from an authorized instructor in flight in an aircraft; and

*Ground training* means that training, other than flight training, received from an authorized instructor.

Note that the regulations, 14 C.F.R. §61.1 and 14 C.F.R. §119 (e)(1), differ in terms from *instruction, not defined or used*; whereas flight or ground *training* received from an authorized instructor is used throughout Part 61.

The area of confusion under §119.1 (e)(3) where use of the words "flight training" occur, and where one would reasonably interpret these words to be as defined in §61.1.

How would "student instruction," §119 (e)(1), be interpreted – as synonymous with flight or ground training per §61.1 definitions? I note the regulatory use of "student" is only use to denote a person seeking a Sport, Recreational, or Private pilot certificate under the training received from an authorized instructor. Might it be interpreted as instruction, not for a bona fide pursuit of a pilot rating certificate, and instruction *not* received from an authorized instructor, but by, say, a Commercial/ATP Pilot in particular flight operations such as Ferry flights; Aerial work

operations, including—Crop dusting, seeding, spraying, and bird chasing; Banner towing; Aerial photography or survey; or Fire fighting?

Since the words “Discovery Flight, Introductory Flight, Orientation Flight, and Demonstration Flight” are not defined regulatorily in Part 61, might it be that a Commercial Pilot or ATP may offer to perform this kind of flight operation, that is, can these kinds of flight operations be offered by an independent Commercial/ATP pilot or contract or employed pilot a by FBO or a flight school to take advantage of the exemption of §119 (e)(1) and (3)?

If so, would not such an offered service be interpreted as *not* being flight training provided for the purpose of obtaining a pilot certificate?

If “Discovery Flight, Introductory Flight, Orientation Flight, and Demonstration Flight” are interpreted as *not* being bona fide flight training provided for the purpose of obtaining a pilot certificate, then what is the interpretation of such flights if accomplished in the following scenarios.

I am a hypothetical owner of an FBO or flight school offering 30 minutes to one hour local Discovery Flight, Introductory Flight, Orientation Flight, and Demonstration flights in a single-engine airplane. I, being an appropriately rated pilot, accept and accomplish flights for the following kinds of customer:

Parent scheduling a flight as a birthday present for their 13 year old son/daughter - not interested in further training for a pilot certificate – only a gift for a flight.

Individual not interested in training for a pilot certificate wanting only to experience flying in a small GA airplane around the local area, and perhaps taking random aerial photographs or recording the flight.

Individual not interested in training for a pilot certificate wanting only to fulfill a “bucket list” item.

Accepting contacts from a third party, such as Groupon entity, for Discovery/Orientation flights where the customer pays the third party, where the third party subsequently schedules a flight for the customer, and pays the flight costs following completion of the flight services.

If these kinds of local flights are not bona fide training flights, then might they be interpreted as “Nonstop Commercial Air Tours,” and if so, would one need a Letter of Authorization issued under §91.147 or be a certificated Part 135 operation?

Lastly, if these kinds of flights are offered to individuals who have no expressed desire to further training for a pilot certificate and does not receive, or is given minimal instruction/explanation, by an authorized instructor, be interpreted as remaining under the exemption of 14 C.F.R. §119.1 (c)(1) and (e)(3)?

Respectfully.

William W. Grannis  
Certificated Flight Instructor

