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

Office of the Chief Counsel

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

DEC 22 2008

Daniel Murphy
5050 Hibbs Drive Apt D
Columbus, OH 43220-2669

Dear Mr. Murphy:

This is in response to your August 28, 2008, request for a legal interpretation. In your letter you requested clarification regarding five issues: (1) whether a flight instructor providing flight instruction for hire is required to possess a second-class medical certificate; (2) whether a student pilot may act as pilot-in-command of a flight above a broken cloud layer and remain in compliance with 14 C.F.R. § 61.89(a)(7); (3) how a flight instructor can comply with 14 C.F.R. § 61.189(a) when the student pilot does not possess a logbook; (4) whether a flight instructor providing an "introductory flight" to a person not interested in receiving instruction must possess a second class medical certificate; and (5) whether a flight crewmember is required to have a shoulder harness secured during taxi.

You enclosed two interpretations issued in 1991 discussing the medical certification requirements for a certified flight instructor (CFI) proving flight instruction for compensation. (Gandy Interpretation, June 26, 1991; Rubin Interpretation, October 21, 1991.) The Gandy Interpretation states that a second-class medical certificate is required for a CFI who is exercising the privileges of a commercial pilot certificate by acting as a pilot-in-command (PIC) or as a required flight crewmember. The Rubin Interpretation states that a third-class medical certificate is sufficient without referencing the exercise of privileges of a commercial pilot certificate. You requested clarification of what medical certification is required for a flight instructor for compensation also acting as PIC.

14 C.F.R. § 61.3(c)(1) states, in relevant part, that a person may not act as pilot-in-command or as a required flight crewmember unless that person has a current and appropriate medical certificate. The FAA promulgated amendments to 14 C.F.R. § 61.23 in April 1997 that address the medical certification requirements for flight instructors. Section 61.23(a)(3) states, in relevant part, that a person must hold a third-class medical certificate when exercising the privileges of a flight instructor certificate if the person is acting as pilot-in-command or as a required flight crewmember. The preamble to this final rule explains that because the compensation received by a CFI acting as PIC or as required flight crewmember is for the flight instruction, and not for the carriage of persons or property, the flight instructor is exercising the privileges of a private pilot and must hold only a third-class medical certificate. 62 FR 16242. If the flight instructor does not act as PIC or required flight crewmember, then the flight instructor is not exercising any pilot privileges and requires no medical certificate. *Id.* Accordingly, the current regulations require the flight

instructor to possess a third-class medical certificate when engaging in flight instruction and acting as PIC or as required flight crew member. In light of the amendments to section 61.23, the FAA is removing the Gandy and Rubin interpretations from the Legal Interpretations and Chief Counsel's Opinions website.

Secondly, you inquire whether a student pilot may operate solo above a scattered or broken cloud layer. You reference the prohibition in 14 C.F.R. § 61.89(a)(7) that a student pilot may not act as PIC when the flight cannot be made with visual reference to the surface.

14 C.F.R. § 61.87 sets forth the requirements that a student pilot must meet prior to operating an aircraft in solo flight. Assuming that the student pilot complies with those requirements for solo flight, section 61.89 sets forth limitations on a student pilot. Section 61.89(a)(7) states, in relevant part, that a student pilot may not act as PIC of an aircraft when the flight cannot be made with visual reference to the surface.[1] This general prohibition against operating in marginal weather conditions is intended to alleviate the problem of student pilots becoming lost or disoriented in those marginal conditions. Operating above a scattered or broken cloud layer could be the sort of marginal conditions that could cause a student pilot to become lost or disoriented. For this reason, section 61.89(a)(7) prohibits a student pilot from acting as PIC above a scattered or broken cloud layer.

Thirdly, you request information regarding how to maintain compliance with 14 C.F.R. § 61.189(a) when the student pilot does not possess or intend to obtain a logbook.

Section 61.189(a) requires a flight instructor to sign the logbook of each person to whom that instructor has given flight training or ground training. 14 C.F.R. § 61.51 sets forth the requirements for pilot logbooks. FAA does not define the term "logbook" in its regulations. A logbook can be a separate book with rows and columns for recording flight times, training times, and endorsements. However, it also can be a training tabulation document, computer-generated log sheets, or any other record from which FAA can decipher the training, aeronautical experience time and content, and currency of experience. Accordingly, signing whatever the student pilot presents as a logbook or, alternatively, signing a copy of the training record ledger would comply with the requirements of section 61.189(a).

Next, you discuss a situation in which a CFI provides an introductory flight for compensation to a person, but it is doubtful whether flight instruction actually is provided because the person wants to see if he or she enjoys flying or wants to sightsee. You ask first whether this type of flight is permissible under the student instruction exception of 14 C.F.R. § 119.1(e)(1). Then you ask if the CFI must possess a second-class medical certificate to perform this type of flight.

Although introductory flights are permissible, the purpose of the flight must be student instruction. If no instruction is involved, the flight is a commercial operation for which a

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[1] Additionally, section 61.89(a)(6) states, in relevant part, that a student pilot may not act as PIC of an aircraft when the flight cannot be made with a flight or surface visibility of less than 3 statute miles during daylight or 5 statute miles at night.

Part 119 certificate is required.[2] *See* 14 C.F.R. § 119.1. For example, your hypothetical introductory flight for a person who simply wants to look out the window of the aircraft seems to be a commercial operation because no student instruction is provided or desired by the passenger. However, there may be circumstances in which student instruction is provided during an introductory flight for a person contemplating the pursuit of a pilot certificate. Assuming that the flight is for the purpose of student instruction, the CFI must possess a third-class medical certificate as discussed above.

Finally, you requested clarification of the apparent contradictions between 14 C.F.R. § 91.105(b) and § 91.107(a)(3) and asked whether a flight crewmember must wear a shoulder harness, assuming that one is installed and does not restrict the performance of required duties, during taxi.

Section 91.105(b) states that a required flight crewmember must keep the shoulder harness fastened during takeoff and landing unless the seat is not equipped with a shoulder harness, or the harness would interfere with the performance of required duties. This section does not require a shoulder harness to be fastened during taxi. Section 91.107(a)(3) requires, in relevant part, that each person on board a U.S.-registered civil aircraft must occupy a seat with the safety belt (or shoulder harness, if installed) properly secured during any movement on the surface, takeoff, and landing. Although there are exceptions to this requirement stated in section 91.107(a)(3), none of those exceptions are relevant to the inquiry. However, section 91.107(b) states that section 91.107(a)(3) does not apply to persons subject to section 91.105. Therefore, flight crewmembers are excepted from the operation of section 91.107(a)(3). Accordingly, as a flight crewmember, you must comply with the requirements of section 91.105, which does not require a shoulder harness to be secured during taxi.

This response was prepared by Robert Hawks, an Attorney in the Regulations Division of the Office of Chief Counsel and coordinated with the Certification and General Aviation Operations Branch of 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, AGC-200

[2] However, there are exceptions to the requirement to obtain a Part 119 certificate outlined in section 119.1(e) that may apply to a particular operation.