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

Office of the Chief Counsel

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# Memorandum

Date: February 28, 2022

To: Robert C. Carty, Acting Executive Director, Flight Standards Service, AFX-1

From: Lorelei D. Peter, Assistant Chief Counsel for Regulations, AGC-200

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Subject: Reconsideration of Legal Interpretations (Glaser-2008 and Pratte-2012)

This memorandum is in response to the request, dated May 25, 2021, for reconsideration of two legal interpretations pertaining to instrument training requirements under § 61.65. Specifically, that request is concerned that the interpretations create requirements that go beyond the language in § 61.65(d)(2)(ii)(C).

Section 61.65(d) contains the aeronautical experience requirements for a person applying for an instrument-airplane rating. Section 61.65(d)(2)(ii)(C) states, in relevant part, that an applicant must complete 40 hours of actual or simulated instrument time that includes at least one cross country flight that is performed under instrument flight rules and involves "three different kinds of approaches with the use of navigation systems."

As noted, the FAA has previously issued two legal interpretations to address what constitutes "three different kinds of approaches with the use of navigation systems." The Glaser interpretation, issued in 2008, concluded that an applicant for an instrument rating must use three different kinds of navigation systems to meet § 61.65(d)(2)(ii)(C). The Pratte interpretation, issued in 2012, confirmed the conclusion in Glaser and further concluded that precision approach radars (PAR) and airport surveillance radars (ASR) are not considered navigation systems for the purpose of meeting the requirements in § 61.65(d)(2)(ii)(C). For the reasons provided in this memorandum, the Office of the Chief Counsel has decided to rescind the Glaser and Pratte interpretations.

The Glaser interpretation inaccurately summarizes the language in § 61.65(d)(2)(ii)(C) as requiring the use of three different kinds of navigation systems.[1] The regulation's plain language requires three different types of approaches, not three different navigation systems. Neither § 1.1 nor part 61 define either "approach" or "navigation system" to provide insight into the language in § 61.65(d)(2)(ii)(C). Section 1.1 defines "instrument approach procedure" as "a series of predetermined maneuvers by reference to flight instruments with specified protection from obstacles and navigation signal reception capability;" however, it does not further elaborate on the definition of a flight instrument and whether certain navigation systems should be included or excluded from that definition.[2]

Notably, § 61.65(c), which lists the areas of operation for an instrument rating, lists navigation systems and instrument approach procedures as separate areas of operation. In the Airman Certification Standards (ACS) for the instrument rating, while navigation systems are covered under knowledge and skill elements of precision and non-precision approaches in the "Instrument Approach Procedures" area of operation, "Navigation Systems" is also addressed as a separate area of operation.[3] Furthermore, the ACS directs the evaluator to test an applicant on three different kinds of approaches, consisting of one precision approach and two non-precision approaches, which must use two different kinds of navigational aids.[4] Therefore, "approach" in § 61.65(d)(2)(ii)(C) reasonably refers to an instrument approach, which is separate from a navigation system.[5] Furthermore, under § 61.65(c), an instrument rating applicant must receive training in eight different areas of operation, two of which are navigation systems and instrument approach procedures. This indicates part 61 considers navigation systems and instrument approaches as separate from one another. Therefore, "three different" should be read as solely modifying "kinds of approaches" in § 61.65(d)(2)(ii)(C).

The Glaser interpretation analyzes whether ASR and PAR are considered navigation systems under § 61.65(d)(2)(ii)(C). Glaser reasons that ASR and PAR are not navigation systems because they are radar-tracking systems that do not require flight crew to direct an aircraft on its course utilizing navigation instruments and were used infrequently at the time of the interpretation. Glaser also provided its own list of six acceptable navigation systems an applicant could choose from to meet its interpretation of the regulation. The Pratte

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[1] The Glaser interpretation properly quotes the language in § 61.65(d)(2)(ii)(C) but then states without any further analysis or explanation that the regulation "clearly states that to satisfy the requirements of a cross-country flight . . . a pilot must use three different kinds of *navigation* systems" (emphasis in original).

[2] Similarly, § 61.61 refers to part 97 to define "instrument approach," but part 97 does not clarify the references in § 61.65(d)(2)(ii)(C) to "approach" or "navigation system."

[3] June 2018 Airman Certification Standards, Instrument Rating – Airplane, Area of Operation VI, Instrument Approach Procedures, FAA-S-ACS-8B, pp. 15-20, https://www.faa.gov/training_testing/testing/acs/media/instrument_rating_acs_change_1.pdf

[4] *Id.* at pp. A-16 and FAA Order 8900.1, Volume 5, Chapter 2, Section 9, Paragraph 5-433(A)(2), Practical Test

[5] While it is possible from the regulatory history of § 61.65(d)(2)(ii)(C) that "three different kinds" may modify "approaches with the use of navigation systems" rather than just "approaches," the FAA interprets the plain language of the regulation to mean "approach" and "navigation system" are separate from one another. See *Kisor v. Wilkie*, 529 U.S. 120, 161 (2000) ("[C]ongress intended for courts to defer to agencies when they interpret their own ambiguous rules.")

interpretation partially rescinds Glaser by clarifying that Glaser's list of acceptable navigation systems was overly restrictive and was not intended to exclude navigation systems that might be approved in the future. However, Pratte affirms Glaser's conclusion that ASR and PAR do not qualify as navigation systems under § 61.65(d)(2)(ii)(C).

The FAA finds that PAR should be considered an acceptable navigation system under § 61.65(d)(2)(ii)(C) because § 1.1 defines a precision approach procedure, which is a type of instrument approach, as including the use of PAR. As a result, the FAA is rescinding both the Glaser and Pratte interpretations. Furthermore, because the regulations do not define "navigation systems," Flight Standards Service (AFS) is in the best position to issue policy and guidance on what "navigation systems" mean and which ones may be used under § 61.65(d)(2)(ii)(C). Therefore, AFS should determine whether ASR should be part of a nonprecision instrument approach under § 1.1, and whether the use of ASR is considered a navigation system under § 61.65(d)(2)(ii)(C).[6]

We believe that the above responds to the inquiry. If you require further assistance, please contact my staff.

[6] Part 97 considers an approach using ASR as an example of a nonprecision approach procedure. FAA Order 8260.3E, Chapter 1, Section 1, Paragraph 6(c), Types of Procedures