

2017

De Facto Amendment of a FAA Regulation by Non-Regulatory Interpretation: Unintended Consequences of FAA Suggestions on How to Comply With the Flight Review Requirement

Michael L. Shakman

Miller Shakman & Beem, LLP, mlshak@aol.com

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Recommended Citation

Michael L. Shakman, *De Facto Amendment of a FAA Regulation by Non-Regulatory Interpretation: Unintended Consequences of FAA Suggestions on How to Comply With the Flight Review Requirement*, 82 J. Air L. & Com. 333 (2017)
<http://scholar.smu.edu/jalc/vol82/iss2/5>

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**DE FACTO AMENDMENT OF A FAA REGULATION BY
NON-REGULATORY INTERPRETATION: UNINTENDED
CONSEQUENCES OF FAA SUGGESTIONS ON HOW
TO COMPLY WITH THE FLIGHT REVIEW
REQUIREMENT**

MICHAEL L. SHAKMAN*

THE FEDERAL AVIATION ADMINISTRATION (FAA) regulates civil aviation in the United States primarily by issuing regulations.¹ Before becoming effective, FAA regulations (FARs) must be published in the Federal Register, a period must be allowed for public comment, and those comments must be reviewed and considered by the FAA.² The process can be lengthy but serves the important purpose of allowing interested parties to comment.³ It also affords the FAA an opportunity to consider the ramifications of proposed regulations that the agency may have overlooked in the drafting process.⁴

In contrast, the FAA can issue Advisory Circulars that need not be published in the Federal Register and are provided with

* Partner, Miller Shakman & Beem, LLP, Chicago. Pilot and flight instructor with more than 4,000 hours in airplanes and gliders.

¹ 49 U.S.C. § 106(f) (3) (2012).

² U.S. Dep't of Transp., FAA, Advisory Circular 11-2A ¶ 1-4 (July 26, 1984). The FAA describes its regulatory process as follows:

When an amendment to a FAR is proposed in a Notice of Proposed Rulemaking (NPRM) it is published in the Federal Register. This NPRM not only announces the proposal but it also invites the public to participate in the rulemaking process by submitting written data, views, or arguments prior to a specific date. Each response contributes to the evaluation of the proposal and is considered in the development of the amendment to the FAR which is also published in the Federal Register. . . . In order to develop FAR's that are responsive to the needs and desires of the public and that conform with the regulatory responsibilities of FAA, it is essential that the public participate in the rulemaking process to the fullest practicable extent.

³ See 14 C.F.R. §§ 11.25, 11.39.

⁴ U.S. Dep't of Transp., FAA, Advisory Circular 11-2A ¶ 1-4 (July 26, 1984).

limited or no advance public circulation.⁵ Advisory Circulars are nonbinding discussions of important aviation topics that inform pilots and others of safety or technical matters or assist in interpretation of regulations.⁶ They generally serve that purpose well.

This article discusses what can happen when, with apparently good intentions, the FAA issues an Advisory Circular that purports to explain how to comply with an important regulation in ways that go far beyond the language and intent of the regulation. The result is a de facto amendment without the accompanying safeguards of public comment or consideration of unforeseen but significant consequences for the effected aviation community participants.

The regulation in question is Section 61.56 of the FARs, which governs pilot flight reviews.⁷ The relevant Advisory Circular, designated AC 61-98C, was issued in late 2015 as the fourth amendment to a long-standing Advisory Circular.⁸ If applied as written, AC 61-98C would change the flight review regulation in important respects, facilitate claims for liability of flight instructors and others, and discourage use of the flight review process.

I. THE FLIGHT REVIEW REGULATION

Section 61.56 is a FAR with which all pilots are familiar. It affects most pilots by requiring that they undergo a flight review every two years conducted by a certified flight instructor (CFI) in order to continue to exercise pilot privileges.⁹ The Section states, in relevant part:

- (a) Except as provided in paragraphs (b) and (f) of this section, a flight review consists of a minimum of 1 hour of flight training and 1 hour of ground training. The review must include:
 - (1) A review of the current general operating and flight rules of part 91 of this chapter; and
 - (2) A review of those maneuvers and procedures that, at the discretion of the person giving the review, are necessary

⁵ U.S. Dep't of Transp., FAA, Order 1320.46D FAA Advisory Circular System ¶¶ 4-1, 4-2 (2015), https://www.faa.gov/documentLibrary/media/Order/FAA_Order_1320.46D.pdf [<https://perma.cc/NM2J-Q3RF>].

⁶ *See id.*

⁷ *See* Flight Review, 14 C.F.R. § 61.56 (2016).

⁸ U.S. Dep't of Transp., FAA, Advisory Circular 61-98C (Nov. 20, 2015).

⁹ *See* 14 C.F.R. § 61.56(c).

for the pilot to demonstrate the safe exercise of the privileges of the pilot certificate.¹⁰

Unless one of several exceptions apply, a pilot who does not meet the flight review requirement loses the right to exercise his or her pilot privileges:

- (c) Except as provided in paragraphs (d), (e), and (g) of this section, no person may act as pilot in command of an aircraft unless, since the beginning of the 24th calendar month before the month in which that pilot acts as pilot in command, that person has—
 - (1) Accomplished a flight review given in an aircraft for which that pilot is rated by an authorized instructor and
 - (2) A logbook endorsed from an authorized instructor who gave the review certifying that the person has satisfactorily completed the review.¹¹

Section 61.56 permits a single flight review in any aircraft for which a pilot is licensed to satisfy the flight review requirement for all aircraft for which the pilot is licensed.¹² When the regulation was first discussed in 1973, the FAA had proposed to require a separate flight review for each category and class of aircraft for which a pilot was licensed.¹³ Although that suggestion generated considerable public opposition and was dropped by the FAA,¹⁴ it has reemerged in revised AC 61-98C.¹⁵

¹⁰ 14 C.F.R. § 61.56(a).

¹¹ 14 C.F.R. § 61.56(c), (d), (g); 14 C.F.R. § 121.441 (2016). The principal exceptions are stated in § 61.56(d):

A person who has, within the period specified in paragraph (c) of this section, passed a pilot proficiency check conducted by an examiner, an approved pilot check airman, or a U.S. Armed Force, for a pilot certificate, rating, or operating privilege need not accomplish the flight review required by this section

Student pilots are expressly exempted from the flight review requirements by § 61.56(g), if holding a current solo endorsement from a CFI. Airline pilots generally are exempted by meeting the pilot proficiency check conducted by their employer.

¹² *Id.*

¹³ See U.S. Dep't of Transp., FAA, Advisory Circular 61-98A ¶ 6-1 (Mar. 26, 1991). Examples of a category are "airplane," "rotorcraft," and "glider." See General Definitions, 14 C.F.R. § 1.1 (2016). Some of these categories are broken down into classes of aircraft, examples being "single-engine land," "single-engine sea," "helicopter," "gyroplane," etc. See *id.*

¹⁴ See U.S. Dep't of Transp., FAA, Advisory Circular 61-98A ¶ 6-2 (Mar. 26, 1991). ("During public hearings conducted in the initial phases of the regulatory review, comments submitted were generally unfavorable with respect to the category and class requirement proposed for the flight review.")

Section 61.56 grants broad discretion to the CFI to determine both the flight maneuvers to be executed by the pilot and the nature of “the current general operating and flight rules of [14 C.F.R.] [P]art 91” to be reviewed as part of the non-flying component of the flight review.¹⁶ No specific procedures are set forth defining how the instructor should determine if the pilot has demonstrated the necessary knowledge of Part 91 or the ability to safely exercise the pilot’s privileges.

II. THE ADVISORY CIRCULAR

AC 61-98C focuses on flight reviews and, separately, on instrument proficiency checks for pilots holding instrument ratings.¹⁷ It provides sound safety advice when, for example, it urges pilots to “design a currency program tailored to their individual operating environments and needs.”¹⁸ It correctly states that “[i]n most cases, pilots should consider the need for currency beyond that specified by the 14 CFR.”¹⁹ It suggests that pilots consider participating in the FAA WINGS Program and “read aviation periodicals on a regular basis.”²⁰ The analysis in this article is not intended as criticism of safety advice. It focuses, instead, on potential liability consequences for flight instructors and flight schools based on statements made in the Advisory Circular and on other consequences of the Advisory Circular.

The Advisory Circular provides “suggestions” and analyses that are contrary to the requirements of Section 61.56, or that go well beyond the requirements of that regulation. The Advisory Circular appears to be a non-regulatory effort to revisit the FAA’s 1973 effort to require a separate flight review for each category and class rating held by a pilot. The FAA’s statements in the Advisory Circular may, as discussed below, form the basis for asserting liability against instructors who comply with the regulation but not with all aspects of the suggestions in the Advi-

¹⁵ See U.S. Dep’t of Transp., FAA, Advisory Circular 61-98C ¶ 3-1 (Nov. 20, 2015).

¹⁶ Flight Review, 14 C.F.R. § 61.56(a) (2016).

¹⁷ U.S. Dep’t of Transp., FAA, Advisory Circular 61-98C (Nov. 20, 2015). This article focuses on the flight review components of AC 61-98C. Normally instrument proficiency check flights are conducted separately from flight reviews, as many pilots do not have instrument ratings or, if they do, elect to maintain instrument currency by actual instrument flight activity or by practice instrument flight. See Recent Flight Experience: Pilot in Command, 14 C.F.R. § 61.57(c) (2016).

¹⁸ U.S. Dep’t of Transp., FAA, Advisory Circular 61-98C ¶ 1-7 (Nov. 20, 2015).

¹⁹ *Id.*

²⁰ *Id.*

sory Circular. It thereby discourages use of flight reviews generally.

For example, the Advisory Circular notes that pilots who add a rating can treat the check ride for the new rating as satisfying the flight review requirement, but recommends against it:

However, the FAA recommends that pilots consider also accomplishing a review under some of the following circumstances. For example, a pilot with an Airplane Single-Engine Land (ASEL) rating may have recently obtained a glider rating, but may still wish to consider obtaining a flight review in a single-engine airplane if the appropriate 24-month period has nearly expired. When approached by pilots seeking advice on such matters, CFIs should consider the factors described in the following paragraphs.²¹

The paragraphs that follow make a series of recommendations directed at CFIs before undertaking to provide a flight review.²²

Among these recommendations is the statement that when a pilot holds multiple ratings, “the pilot may take a flight review in any one of the aircraft for which he or she holds a rating or operating privilege and they will have met the regulatory requirement for all aircraft for which they [sic] hold a certificate and or rating.”²³ But the Advisory Circular recommends that CFIs resist such action by pilots rated in more than one type of aircraft:

The CFI may also wish to recommend that the pilot take a review in more than one category/class of aircraft under certain circumstances. For example, a pilot with ASEL and glider ratings may have flown only gliders in the last 2 years but is also contemplating flying single-engine airplanes in the near future. If a pilot who requests a review only in the glider approaches a CFI, the CFI may wish to recommend an additional review by a qualified person in a single-engine airplane before the pilot acts as PIC of a single-engine airplane.²⁴

Section 61.56(a)(2) states that the maneuvers to be executed in a flight review are those determined by the CFI.²⁵ They are determined to be those that “at the discretion of the person giving the review, are necessary for the pilot to demonstrate the

²¹ *Id.* ¶ 4-1.

²² *Id.* ¶ 4-2.

²³ *Id.*

²⁴ *Id.*

²⁵ Flight Review, 14 C.F.R. § 61.56(a)(2) (2016).

safe exercise of the privileges of the pilot certificate.”²⁶ Unlike the Advisory Circular, the regulation does not suggest that the CFI should require the pilot to demonstrate proficiency in each category and class of aircraft for which the pilot is rated.²⁷

The Advisory Circular also addresses another issue beyond the scope of Section 61.56—the possibility that the nature of the pilot’s future flight operations may change:

The CFI should consider the need for an in-depth review of certain subjects or procedures if the type of flight operations is likely to change, or if other extenuating circumstances exist. For example, a pilot who normally conducts only local flight operations may plan to begin flying to a location with Class B airspace. Another pilot may only operate a two-seat aircraft without radio but will operate in close proximity to Class B airspace. In both cases, the CFI should include Class B airspace operating requirements and procedures in the flight review. This review should also include pertinent revisions to operational regulations to ensure that the pilot has full knowledge of these changes.²⁸

Section 61.56, in contrast, does not suggest that the CFI should conduct a forward-looking review of possible changes in the pilot’s typical operations.²⁹ A forward-looking review may be a good idea to promote aviation safety and enhance pilot skills, but it is not part of the regulation.

The Advisory Circular is similarly expansive when it comes to the so-called ground portion of the flight review, when the CFI reviews the pilot’s knowledge of the operating rules of 14 C.F.R. Part 91:

The CFI should tailor the review of general operating and flight rules to the needs of the pilot under review. The objective is to ensure that the pilot can comply with all regulatory requirements and operate safely in various types of airspace under an appropriate range of weather conditions. As a result, the CFI should conduct a review that is broad enough to meet this objective, yet provide a more comprehensive review in those areas in which the pilot’s knowledge is weaker. In the latter instance, the CFI may wish to employ a variety of references/sources, such as the Aero-

²⁶ *Id.*

²⁷ See 14 C.F.R. § 61.56(c).

²⁸ U.S. Dep’t of Transp., FAA, Advisory Circular 61-98C ¶ 4-2 (Nov. 20, 2015). “Class B Airspace” refers to controlled airspace around major metropolitan airports, such as Chicago’s O’Hare Field or Los Angeles International. U.S. Dep’t of Transp., FAA, Pilot’s Handbook of Aeronautical Knowledge FAA-H-8083-25B ¶ 15-2 (2016).

²⁹ See 14 C.F.R. § 61.56(a)(2).

nautical Information Manual (AIM), to ensure that the pilot's knowledge meets current standards.³⁰

The Advisory Circular's objective, "to ensure that the pilot can comply with all regulatory requirements and operate safely in various types of airspace[,]"³¹ is considerably more expansive than the Section 61.56(a)(1) requirement of a "review of the current general operating and flight rules of [P]art 91 of this chapter."³² The regulation does not use the term "ensure" or suggest that the CFI has a duty to ensure anything, only to conduct "a review of the current general operating and flight rules of [P]art 91"³³ The difference is plainly significant.

The Advisory Circular's advice to the CFI on how to prepare for the flight review also warrants note:

After reaching an agreement on how the CFI will conduct the review, he or she should prepare an action plan for completing the review. The action plan should include a list of regulatory subjects that the CFI will cover, the maneuvers and procedures that the pilot will need to accomplish, the anticipated sequence in which the segments will occur, and the location where the CFI will perform the review. . . . Although not required by § 61.189, the CFI may wish to retain this action plan for an appropriate time period as a record of the scope and content of the review.³⁴

In summary, the Advisory Circular goes well beyond the regulation in the major respects noted above: (a) it recommends a separate flight review for each category and class of aircraft for which the pilot is licensed;³⁵ (b) it recommends a forward-looking analysis of possible changes in the pilot's typical operations and expands the flight review to include such potential activities;³⁶ (c) it asks the CFI to "ensure that the pilot can comply with all regulatory requirements and operate safely in various types of airspace under an appropriate range of weather conditions";³⁷ and (d) it suggests generating and keeping records that include a "list of regulatory subjects" covered and maneuvers and procedures to be accomplished.³⁸ The FAA has conflated

³⁰ U.S. Dep't of Transp., FAA, Advisory Circular 61-98C ¶ 4-3 (Nov. 20, 2015).

³¹ *Id.*

³² Flight Review, 14 C.F.R. § 61.56(a)(1) (2016).

³³ *Id.*

³⁴ U.S. Dep't of Transp., FAA, Advisory Circular 61-98C ¶ 4-3 (Nov. 20, 2015).

³⁵ *Id.* ¶ 4-2.

³⁶ *Id.*

³⁷ *Id.* ¶ 4-3.

³⁸ *Id.*

two related but distinct subjects: the way to improve aviation safety, and the level of competence and knowledge a pilot must demonstrate to renew his flying privileges every two years. These topics are related but not the same. Conflating the two and adding requirements not found in the regulation can have potentially serious liability ramifications.

III. UNINTENDED CONSEQUENCES

Aircraft accident litigation often involves claims against everyone who had any connection with the accident pilot, including flight instructors.³⁹ While CFIs are not often sued for negligence, it does occur.⁴⁰ The Advisory Circular states expansive performance standards for CFIs, which are summarized above.⁴¹ It is reasonable to anticipate that those standards will be applied to measure the conduct of CFIs who provide flight reviews for pilots subsequently involved in aircraft accidents. If, following an aircraft accident, a CFI were found to be negligent because he or she did not follow one of the expanded standards (or lacked records to show what was covered in the flight review), liability could also be imputed to the CFI's employer, who may be a flight school or other recurrent training provider.⁴²

A CFI planning to conduct a flight review for a pilot with more than one aircraft rating, or even a pilot with a single rating whose flying might change in nature, would have to think twice about whether to provide the review at all. In the case of a pilot with more than one rating, the CFI must consider whether to insist as a condition of the review that the pilot agree to obtain a second flight review for the other category or class of aircraft for which the pilot is licensed. The CFI will need to consider asking the pilot whether it is possible that he may change his flying practices from, for example, local daytime VFR (visual flight rules) flights to long-distance night flights in instrument conditions, or some variant thereof. If the pilot indicates that he might change his flying practices, according to the Advisory Cir-

³⁹ See, e.g., *Garland v. Sybaris Club Int'l, Inc.*, 21 N.E.3d 24, 27–30 (Ill. App. Ct. 2014) (describing the many types of claims that can be asserted against parties having any relationship to a significant aircraft accident, including claims against flight instructors and recurrency training providers who had trained or reviewed the accident pilot, the firm whose business used the accident aircraft on the day of the accident, and the owner who entrusted the aircraft to the accident pilot.).

⁴⁰ See *id.* at 27, 43 ¶ 49.

⁴¹ See *supra* Part II.

⁴² See *Garland*, 21 N.E.3d at 44 ¶ 53.

cular, the CFI would need to expand the scope of the flight review substantially.⁴³ The CFI would also have to think about the nature and breadth of the review of Part 91 regulations, of the weather conditions to be discussed, and about keeping detailed records.⁴⁴ These are realistic concerns for any CFI who reads the Advisory Circular.

If a pilot were involved in a significant accident, the most likely claim against a CFI who administered a flight review to the pilot after the date of issuance of AC 61-98C would be that the CFI did not do all of the things the Advisory Circular recommended and that, therefore, he failed to comply with Section 61.56, with resulting injury; the plaintiff would have to allege and prove that the failure caused the accident or proximately contributed to it, depending on the standard for liability under the applicable state law.⁴⁵

Violation of a FAR can be the basis for generating a rebuttable presumption of negligence.⁴⁶ If a plaintiff presents plausible expert evidence (and perhaps even if he or she does not) that in the case of the accident pilot Section 61.56 required the CFI to take additional steps described in the Advisory Circular, a court might conclude that the departure from the Advisory Circular is sufficient to generate an issue of fact for a jury to decide. Without an allegation that the flight review was inadequate, it is not likely that a plaintiff could successfully advance a negligent instruction claim premised solely on the assertion that the flight review constituted instruction.⁴⁷ Case law dealing with instructor

⁴³ U.S. Dep't of Transp., FAA, Advisory Circular 61-98C ¶ 4-2 (Nov. 20, 2015).

⁴⁴ *Id.* ¶ 4-3.

⁴⁵ See *Garland*, 21 N.E.3d at 44-45 ¶ 54.

⁴⁶ See, e.g., *Steering Comm. v. United States*, 6 F.3d 572, 576 (9th Cir. 1993) (discussing the effect of a federal regulatory violation under California law and applying a rebuttable presumption of negligence from the violation if it caused the injury and “the statute, ordinance, or regulation was intended to protect the class of person or property injured.”); accord *Avemco Ins. Co. v. Elliott Aviation Serv.*, 86 F. Supp. 2d 824, 829 (C.D. Ill. 2000) (applying Illinois law that “violation of a statute or ordinance designed for the protection of human life or property is *prima facie* evidence of negligence” and citing *French v. City of Springfield*, 357 N.E.2d 438, 440 (Ill. 1976)).

⁴⁷ See *Waugh v. Morgan Stanley & Co.*, 966 N.E.2d 540, 551-554 (Ill. App. Ct. 2012) (discussing the case law in other jurisdictions that reject such claims, and following that case law in Illinois). Courts generally hold that negligent instruction claims against flight instructors do not state a viable cause of action. See *id.* Claims of actual negligence in the course of providing a flight review or other instructional flight have been found to state claims. See *Avemco Ins. Co.*, 86 F. Supp. 2d at 827, 831 (finding that the flight review constituted instruction and

liability is, therefore, also not likely to be relevant to a claim based on an allegedly inadequate flight review.⁴⁸

IV. WHAT OPTIONS ARE AVAILABLE TO THE CFI?

When a flight review applicant has multiple ratings or flies in a variety of flight conditions (or may do so), what options does the CFI have to limit his or her potential liability in the event of a subsequent accident involving the pilot?

One option is only to participate in flight reviews for pilots known to the instructor to be engaged in one specific type of flying and who have only a single rating. For such a pilot, the CFI may conduct and document the flight review by addressing all of the many possible aspects of that pilot's flight activities.⁴⁹ While that approach provides no assurance of avoiding claims and potential liability, it does reduce the risk.

Not participating in flight reviews may be an acceptable solution in many cases. Indeed, the Advisory Circular recommends that pilots consider the FAA's WINGS program, which provides a substitute for a flight review without an instructor sign-off as such.⁵⁰ Instead, a pilot who has successfully completed three FAA-approved flight activities with a CFI and participated on his or her own in three web-based or live knowledge programs in a twelve-month period is issued a certificate that substitutes for the flight review.⁵¹

The required flight activities are defined by the FAA and consist of discrete, limited tasks from the practical test standards for a rating held by the pilot.⁵² For a pilot holding an airplane, single-engine land rating, for example, required tasks could include demonstrating proficiency in short-field takeoffs and maximum performance climbs, which are specific, focused tasks

holding a flight instructor liable for damages resulting from an off-airport landing following a simulated engine failure in the course of a flight review).

⁴⁸ See *Lunsford v. Tucson Aviation Corp.*, 240 P.2d 545, 546-47 (Ariz. 1952) (where the Arizona Supreme Court stated that the "general rules governing tort liability and negligence are applicable to airplane accident cases" but applied, instead, a common carrier's duty because the defendant conceded that was the relevant standard).

⁴⁹ See U.S. Dep't of Transp., FAA, Advisory Circular 61-98C ¶ 4-3 (Nov. 20, 2015).

⁵⁰ *Id.* ¶¶ 1-7, 4-1.

⁵¹ See FAA, WINGS PILOT PROFICIENCY PROGRAM USER'S GUIDE TC 11-0007 ¶¶ 4.3, 4.7, 5, https://www.faasafety.gov/documents/Wings_Manual.pdf [<https://perma.cc/J23M-WEFC>].

⁵² *Id.* ¶¶ 1.1, 9.6, 9.8.

with defined standards for successful completion.⁵³ Thus, a CFI can limit his activity to approval of three specific sets of flight activities undertaken by an applicant without assuming any duty to determine performance on other maneuvers or to inquire about all the potential types of flying the pilot might do, where he might go, or whether he may fly in different or challenging conditions.⁵⁴ The CFI's signoff in the WINGS Program is limited to the specified tasks undertaken, without any crystal ball obligations or duty to inquire.⁵⁵ Moreover, the CFI has no responsibility to determine that the pilot is familiar with the regulations of Part 91 in any respect.⁵⁶ That requirement is satisfied by the pilot taking and passing three knowledge activities, which include FAA-approved regulatory and other content.⁵⁷

One can argue that the revised Advisory Circular makes the CFI's flight review tasks so potentially onerous as a means to discourage flight reviews and, instead, to encourage participation in the WINGS Program, which is modeled expressly on the recurrent training approach used by the airlines. The Advisory Circular's approach to the flight review is essentially open-ended in terms of maneuvers and regulations on which the CFI is urged to examine the pilot.⁵⁸ The WINGS Program may go too far in the opposite direction. Its approach limits maneuvers to only those selected by the pilot from the menu provided by the FAA and divorces the CFI entirely from the pilot's review of the operating regulations of Part 91.⁵⁹

For those CFIs who do not refer most of their flight review applicants to the WINGS Program, and who provide flight reviews for any but the most standard and relatively simple pilot profiles, the Advisory Circular provides a road map for a plaintiff to later attempt to shift responsibility to the CFI if the pilot is involved in an accident arguably attributable to some aspect of his flying that might have been covered in the flight review, but

⁵³ *Id.* ¶ 4.8.

⁵⁴ *See id.* ¶¶ 4.8, 9.4.

⁵⁵ *See id.*

⁵⁶ *See id.* ¶ 1.3.

⁵⁷ *See id.* ¶ 5.

⁵⁸ *See* U.S. Dep't of Transp., FAA, Advisory Circular 61-98C ¶¶ 4-2, 4-3 (Nov. 20, 2015).

⁵⁹ *See* FAA, WINGS PILOT PROFICIENCY PROGRAM USER'S GUIDE TC 11-0007 ¶¶ 1.3, 4.8, 9.4, https://www.faasafety.gov/documents/Wings_Manual.pdf [<https://perma.cc/J23M-WEFC>].

which was not.⁶⁰ Other than a very extensive (and expensive), thoroughly documented flight review that focuses on all areas in which the pilot may operate and all regulations that may apply to those operations, the CFI may have a difficult time rebutting an argument that something important was missed in the flight review that allegedly accounted for a subsequent accident.

⁶⁰ See U.S. Dep't of Transp., FAA, Advisory Circular 61-98C ¶ 4-2 (Nov. 20, 2015).