



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

John G. Olshock, Chief Ground Instructor
Pan Am International Flight Academy
Career Pilot Division
530 W. Deer Valley Road, Ste. 300
Phoenix, AZ 85027

MAY 4 2007

Dear Mr. Olshock,

This responds to your letter dated January 2, 2007, requesting an interpretation of section 61.57(b), Title 14, Code of Federal Regulations, as it pertains to a flight instructor and student conducting a flight at night where neither is night current under §61.57(b).

You specifically inquire whether "it is legal for a properly rated and current flight instructor (except for §61.57(b)), and a student pilot (who is not yet rated in the airplane but receiving training) to be on board the airplane together during night hours." Your letter references a 2005 interpretation from this Office to Kris Kortokrax, which you believe would make this practice "acceptable, but ... the student referred to in that interpretation ... is appropriately rated, just not current with regard to §61.57." The issue is whether the Kortokrax interpretation, which concluded authorized instructors and individuals receiving instruction are not passengers with respect to each other under §61.57(b), applies where the individual receiving instruction is not rated in the aircraft.

Set forth below is pertinent part of the regulation.

§61.57 recent flight experience: Pilot in command.

(b) Night takeoff and landing experience. (1) Except as provided in paragraph (e) of this section, no person may act as pilot in command of an aircraft carrying passengers during the period beginning 1 hour after sunset and ending 1 hour before sunrise, unless within the preceding 90 days that person has made at least three takeoffs and three landings to a full stop during the period beginning 1 hour after sunset and ending 1 hour before sunrise, and-

- (i) That person acted as sole manipulator of the flight controls; and
- (ii) The required takeoffs and landings were performed in an aircraft of the same category, class, and type (if a type rating is required).

The answer is that the analysis of the Kortokrax opinion applies where the individual receiving instruction is not rated in the aircraft. The Kortokrax opinion was based on the instructor-student relationship, and was not limited by specific rating of the particular student. Therefore, it would be "legal for a properly rated and current instructor (except for 61.57 (b)), and a student pilot, (who is not yet rated in the airplane but receiving training), to be on board the airplane together during night hours."

You also ask whether another student pilot may "occupy the rear seat during the same flight? The student in the rear will switch seats with the student at the controls at an interim airport to receive training as well." You believe that "the student in the rear seat would be classified as a passenger and this would be prohibited by the regulation." While the FAA has never addressed this hypothetical situation, and even though everyone aboard the aircraft has an instructional connection to the flight, we limit the application of the Kortokrax interpretation to the situation where the individual being instructed is actively receiving instruction. Anyone aboard the aircraft not actively receiving instruction (unless acting as a required flight crew member), would be a passenger for application of §61.57.

This response was prepared by Viola Pando, an Attorney in the Regulations Division of the Office of the Chief Counsel and has been coordinated with the General Aviation Division of Flight Standards Service. If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,



For
Rebecca B. MacPherson
Assistant Chief Counsel
for Regulations