U.S. Department
of Transportation

**Federal Aviation
Administration**

Office of the Chief Counsel

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

Memorandum

Date: August 16, 2024

To: Lawrence Fields, Executive Director, Flight Standards Service, AFX-1

From: Laura Megan-Posch, Assistant Chief Counsel for Regulations, AGC-200

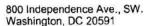Cc: Lynsey Scott, Acting Manager, AGC-240

LAURA JANE
MEGAN-POSCH
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JANE MEGAN-POSCH
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Subject: Rescinding the Kortokrax Legal Interpretation (Aug. 22, 2006)

This memorandum memorializes that the Kortokrax Legal Interpretation (Aug. 22, 2006) was rescinded as of July 23, 2023.[1] The Office of the Chief Counsel rescinded this Legal Interpretation because it is not supported by current FAA regulations. The Kortokrax Legal Interpretation found that a flight instructor who has not met the recent night takeoff and landing experience in § 61.57(b) should be able to accompany a pilot without being considered a passenger. The NPRM stated that the Kortokrax Legal Interpretation was based on the unsupported conclusion that a flight instructor and a person receiving flight training are not considered passengers to one another. Therefore, the Kortokrax Legal Interpretation is no longer valid and may not be relied upon for any purpose. If you require further assistance, please contact my staff.

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[1] See Public Aircraft Logging of Flight Time, Training in Certain Aircraft Holding Special Airworthiness Certificates, and Flight Instructor Privileges, 88 FR 41194 (June 23, 2023). This Notice of Proposed Rulemaking (NPRM) rescinded the Kortokrax Legal Interpretation 30 days after the NPRM's publication in the Federal Register.

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AUG 22 2006

Kris Kortokrax

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Dear Mr. Kortokrax,

This is in response to your request for a legal interpretation of 14 CFR §61.57 concerning pilot in command, recent flight experience. We agree that a properly rated instructor and a student are not passengers within the meaning of §61.57(b) and SFAR 73.

Applicable regulations:
14 CFR 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).

Special Federal Aviation Regulation No. 73-Robinson R-22/R-44 Special Training and Experience Requirements
* * * * *
2. Required training, aeronautical experience, endorsements, and flight review.
* * * * *
(d) Currency Requirements: No person may act as pilot in command of a Robinson model R-22 or R-44 helicopter carrying passengers unless the pilot in command has met the recency of flight experience requirements of §61.57 in an R-22 or R-44, as appropriate.

You requested an interpretation of the term "passenger" in two FAA regulations:
(1) The first concerns the night takeoff and landing experience for pilot in command, §61.57(b); you state a pilot, rated and current except for §6157(b), seeks to have an authorized instructor in the aircraft when the pilot attempts to meet the requirements of 61.57(b). You ask who is permitted to be in the aircraft with the pilot since §61.57(b) prohibits a pilot from acting as PIC of an aircraft carrying passengers. You ask for a clarification of the term "passengers" as used in §61.57(b). You state in your opinion a flight instructor that has not met 61.57(b) should be able to accompany the pilot and these individuals should not be considered "passengers" for purposes of §61.57(b).

We agree that, for purposes of section 61.57(b), an authorized instructor providing instruction in an aircraft is not considered a passenger with respect to the person receiving instruction, even where the person receiving the instruction is acting as PIC. (The instructor must be current, qualified to instruct, and hold a category, class and type rating in the aircraft, if a class and type rating is required.) The instructor is not a passenger because he is present specifically to train the person receiving instruction. Neither is the person receiving instruction a passenger with respect to the instructor. This training may take place, even though neither pilot has met the 61.57(b) requirements.

(2) Your second hypothetical concerns whether an authorized instructor may give another pilot dual instruction in a Robinson R44 helicopter to comply with SFAR73, even though the instructor does not meet the currency requirements of SFAR 73(2)(d). SFAR 73(2)(d) prohibits someone from acting as pilot in command for a passenger carrying operation in a Robinson model R-22 or R-44 model helicopter unless the pilot in command has met the Recency of flight experience requirements of §61.57 in an R-22 or R-44 as appropriate.

In this question, you also believe the instructor should not be considered a passenger for purposes of SFAR 73(2)(d) with respect to §61.57(b), because the instructor would be providing instruction. We agree with your analysis, that a neither a properly trained and qualified instructor nor the person receiving instruction is a passenger for purposes of SFAR 73(2)(d).

We note that this interpretation is limited to the specific circumstances of §61.57(b) and SFAR 73(2)(d). We also note that our interpretation of passenger is limited to the instructor scenario. Absent the instructor scenario above, except where any individual is a required flight crewmember, the person would have to meet §61.57(b).

We trust this interpretation has answered your questions. This was prepared by Douglas Mullen, Attorney, Office of the Chief Counsel and coordinated with Flight Standards Service.

Sincerely,

for Rebecca B. MacPherson
Assistant Chief Counsel, Regulations Division