



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

Office of the Chief Counsel

Office of the Chief Counsel
800 Independence Ave., SW.
Washington, DC 20591

APR 19 2013

Mr. Djavad Mostofizadeh
[REDACTED]

Dear Mr. Mostofizadeh:

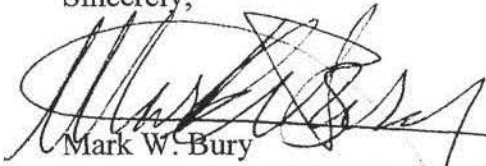
This letter is in response to your request for interpretation of 14 C.F.R. § 91.111 – Operating near other aircraft – as it applies to carrying passengers for hire in formation flight. Specifically, you have asked whether, for purposes of § 91.111(c), “an authorized instructor providing instruction in an aircraft is not considered a passenger with respect to the person receiving instruction, even if the pilot receiving instruction is acting as PIC.”

Section 91.111(c) states, “No person may operate an aircraft, carrying passengers for hire, in formation flight.” The two previous interpretations you cite in your letter, Legal Interpretation to Kristian Kortokrax, August 22, 2006, and Legal Interpretation to John Olshock, May 4, 2007, both address the issue of maintaining currency under 14 C.F.R. § 61.57(b). In these interpretations, we stated that an authorized instructor and a pilot are not passengers to each other when the instructor is present specifically to train the person receiving instruction – in this case for the purpose of maintaining night takeoff and landing experience. As an initial point of clarification, under § 61.193, an instructor is authorized within the limitations of his or her flight instructor certificate and ratings to train and issue endorsements that are required for certificates, ratings, operating privileges, recency of experience, and tests. 14 C.F.R. § 61.193. Current regulations do not require a pilot to receive any training, rating, or endorsement prior to operating an aircraft in formation flight. As such, a pilot providing “instruction” in formation flight is not acting as an authorized instructor and the exception discussed in the previously cited interpretations does not apply.

However, if a pilot who wishes to familiarize himself with formation flight wants to hire a pilot who is experienced in formation flight to be present with him in the aircraft, then the FAA would not consider this arrangement to be a violation of the provision in § 91.111(c) as long as the pilot seeking familiarization is rated in the aircraft (category, class, and type, if appropriate) and the experienced pilot does not act as pilot-in-command of the flight. The FAA considers this situation analogous to transition training, where the pilot has appropriate category and class ratings, but wishes to familiarize himself with a new aircraft within the same category and class.

We hope this response is helpful to you. If you have additional questions regarding this matter, please contact my staff at (202) 267-3073. This response was prepared by Neal O'Hara, an attorney in the International Law, Legislation and Regulations Division of the Office of the Chief Counsel, and was coordinated with the General Aviation and Commercial Division of the Flight Standards Service.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark W. Bury', with a long horizontal line extending to the right.

Mark W. Bury

Acting Assistant Chief Counsel for International Law, Legislation
and Regulations, AGC-200