



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

Subject: Rescinding the Fretwell Legal Interpretation (Sept. 18, 1995)

LAURA JANE
MEGAN-POSCH

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JANE MEGAN-POSCH
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This memorandum memorializes that the Fretwell Legal Interpretation (Sept. 18, 1995) was rescinded as of July 23, 2023.¹ The Office of the Chief Counsel rescinded this Legal Interpretation because it is no longer necessary due to subsequent updates to FAA regulations. The Fretwell Legal Interpretation found that a flight instructor only needs to hold a third class medical certificate when they are acting as pilot in command or as a required flight crewmember. However, after the Fretwell Legal Interpretation was published, § 61.23 was amended in April 1997 to clarify when a flight instructor must hold a medical certificate or driver's license, as applicable. Therefore, the Fretwell Legal Interpretation is no longer valid and may not be relied upon for any purpose. If you require further assistance, please contact my staff.

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 This Notice of Proposed Rulemaking (NPRM) rescinded the Fretwell Legal Interpretation 30 days after the NPRM's publication in the Federal Register.

September 18, 1995

E.V. Fretwell
[REDACTED]

Dear Mr. Fretwell:

Thank you for your letter of March 17, 1995, to the Federal Aviation Administration (FAA) regarding the medical requirements for a certificated flight instructor.

Flight instructor eligibility requirements are in Section 61.183 of the Federal Aviation Regulations (FARs) (14 C.F.R. Part 61, Section 183). FAR Section 61.183, however, does not address medical certification requirements. It has been, and continues to be, the interpretation of the FAA to require a third class medical certificate for a certificated flight instructor who is acting as pilot in command or as a required flight crewmember while giving flight instruction. A certificated flight instructor who is not acting as pilot in command or as a required flight crewmember while giving flight instruction need not possess a valid medical certificate. (See Attachment, Part 61 Certification Bulletin No. 81-2).

Section 61.19(d)(1) of the FAR (14 C.F.R. Part 61, Section 19(d)(1)) states, in pertinent part, that a flight instructor certificate is effective only while the holder has a current pilot certificate and a medical certificate **appropriate to the pilot privileges being exercised**. (Emphasis added)

The FAA has determined that the compensation a certificated flight instructor receives for flight instruction is not compensation for piloting the aircraft but is rather compensation for the instruction. A certificated flight instructor who is acting as pilot in command or as a required flight crewmember and receiving compensation for his or her flight instruction is exercising only the privileges of a private pilot. A certificated flight instructor who is acting as pilot in command or as a required flight crewmember and receiving compensation for his or her flight instruction is not carrying passengers or property for compensation or hire, nor is he or she, for compensation or hire, acting as pilot in command of an aircraft. Therefore, since a certificated flight instructor who is acting as pilot in command or as a required flight crewmember and receiving compensation for his or her flight instruction is exercising the privileges of a private pilot, he or she only needs to hold a third class medical certificate. In this same regard, the FAA has determined that a certificated flight instructor on board an

aircraft for the purpose of providing flight instruction, who does not act as pilot in command or function as a required flight crewmember, is not performing or exercising pilot privileges that would require him or her to possess a valid medical certificate under the FARs.

In your letter, you presented the following four different circumstances and asked what class of medical certificate would be required:

(1) When giving flight instruction for hire and while acting as pilot in command;

(2) When giving flight instruction for hire but not acting as pilot in command;

(3) When giving flight instruction without being compensated and not acting as pilot in command; and

(4) When giving flight instruction while acting as pilot in command but not for hire.

Under scenarios (1) and (4) above, a third class medical certificate is acceptable whether or not the flight instructor is receiving compensation. The determining factor is whether or not the flight instructor is acting as pilot in command or as a required crewmember. Therefore, under scenarios (2) and (3) above, a third class medical certificate would not be necessary since the person is not acting as pilot in command, assuming the flight instructor is not otherwise a required flight crew member.

In your incoming letter you provided the FAA with two different interpretations concerning the medical certification of flight instructors. One was from the Office of Flight Standards here in headquarters and the other was from the Assistant Chief Counsel's Office in the Northwest Mountain Region. You also included a bulletin from the Aircraft Owners and Pilots Association (AOPA), which stated that depending on what region of the United States you reside in determines what class of medical certificate is necessary for flight instruction. The AOPA bulletin was based on the two differing interpretations from the FAA. This office has taken steps to ensure that a consistent interpretation concerning medical certification for certificated flight instructors is observed throughout the FAA.

It does not matter where you live in the United States; medical certification for flight instructors is the same. A flight instructor only needs to have a third class medical certificate when he or she is acting as pilot in command or a required flight crewmember.

We trust the above response will prove helpful to you.
Please contact us if you require any further information in
this regard.

Sincerely,

Donald P. Byrne
Assistant Chief Counsel Regulations
Division

Rescinded