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

Office of the Chief Counsel

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

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Ivan Grau
Chief Flight Instructor
Embry-Riddle Aeronautical University
600 S. Clyde Morris Blvd.
Daytona Beach, FL 32114-3900

Dear Mr. Grau:

This letter responds to the request for a legal interpretation that you mailed to this office on May 6, 2010. Specifically, you have asked for a legal interpretation of the term "required crewmember seat" as used in 14 C.F.R. § 142.49(c)(3)(iv).

Section 61.3 states that a person may serve as a required pilot flight crewmember only if that person holds the appropriate medical certificate issued under part 67. 14 C.F.R. § 61.3(c)(1). For purposes of this provision, a required pilot flight crewmember means a pilot assigned to perform a duty in an aircraft during flight time. 14 C.F.R. § 1.1. We have stated, for example, that an instructor is a required pilot flight crewmember if the person receiving instruction is not qualified to act as pilot in command or if the type certificate of the aircraft on which instruction is being given requires more than one pilot flight crewmember and no other qualified pilot is on board. White Interpretation, Oct. 5, 1978. Likewise, we have indicated that instructors who act as safety pilots must possess valid medical certificates because they are required crewmembers. 62 FR 16220, 16242, April 4, 1997.

Section 61.23 requires a person exercising the privileges of a flight instructor certificate to hold at least a third class medical certificate if serving as a required pilot flight crewmember. 14 C.F.R. § 61.23(a)(3)(v). Section 142.49 states that a training center may not allow an instructor to provide flight instruction in an aircraft unless that instructor, "if instructing or evaluating in an aircraft in flight while occupying a required crewmember seat, holds at least a valid second class medical certificate." 14 C.F.R. § 142.49(c)(3)(iv).

You suggest that the term "required crewmember seat" in § 142.49 applies only to an instructor who is providing instruction in a aircraft type certificated for more than one pilot. Because ERAU provides instruction only in single-piloted airplanes, you contend that your instructors are required to hold only a third class medical certificate in accordance with § 61.23 when serving as a required pilot flight crewmember rather than the second class medical certificate required by § 142.49.

In the 1996 final rule that established training centers, the FAA agreed with commenters who suggested that instructors who provide instruction only in simulators should not be required to hold a medical certificate. 61 FR 34508, 34541, July 2, 1996. We revised the proposed rule to require a second class medical certificate "only when instructing from a required crewmember seat in an aircraft in flight." We stated that this requirement "reiterates part 61 requirements for an instructor to have a medical certificate when acting as required flight crewmember." Accordingly, we interpret "required crewmember seat" under part 142 to have the same meaning as "required crewmember" under part 61. We have found nothing in the preamble or in subsequent guidance to suggest that "required crewmember seat" applies only to aircraft type certificated for more than one pilot.

In issuing this interpretation, we note that, in the 1996 final rule establishing part 142 training centers, we stated that the requirement to hold a valid second class medical certificate was consistent with part 61 requirements. 61 FR 34508, 34540. The following year, however, the FAA issued a final rule clarifying "the existing requirement that a person who is exercising the privileges of his or her flight instructor certificate [under parts 61 or 141] while serving as a pilot in command, or as a required crewmember, must hold a third-class medical certificate." 62 FR 16220, 16242. That final rule did not discuss or revise the requirement for a second class medical certificate in § 142.49(c)(3)(iv). We have referred this issue to Flight Standards Service for further consideration.

This response was prepared by Anne Moore, an Attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Carrier Training and 142 Training Center Branch of Flight Standards Service. We hope this response has been helpful to you. If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel, Regulations Division, AGC-200