Federal Aviation Administration

Memorandum

Date: JUN 11 2013

To: Lawrence Fields, Manager, Flight Standards Division, AEA-200

From: Mark W. Bury, Acting Assistant Chief Counsel for International Law, Legislation and Regulations, AGC-200

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Subject: Legal interpretation regarding qualifications to conduct the observation check required under 14 C.F.R. § 135.340(a)(2)

We received your January 8, 2013 memorandum requesting a legal interpretation, on behalf of the Charlotte Flight Standards District Office (FSDO), regarding the qualifications required for purposes of conducting the observation check required under 14 C.F.R. § 135.340(a)(2). Specifically, you asked whether an operator check airman, who performs the observation check required in § 135.340(a)(2), must be qualified on the aircraft type in which flight instruction is given. For the reasons stated below, we conclude that individuals authorized to administer the § 135.340(a)(2) observation check must be qualified on the aircraft type in which flight instruction is being given.

Subsection 135.340(a)(2) requires flight instructor candidates to "satisfactorily conduct instruction under the observation of…an operator check airman..."

In the preamble to the notice of proposed rulemaking (NPRM) and final rule adding the instructor observation check to part 135, the FAA explained that "[t]he required observation check is an observation check of *instructor functions*." *See* Training and Qualification Requirements for Check Airmen and Flight Instructors, 61 Fed. Reg. 6898, 6901-02 (Feb. 22, 1996) and 61 Fed. Reg. 30734, 30737 (Jun. 17, 1996) (emphasis added).

The flight instructor qualifications provision defines flight instructors as those "instructors who perform the functions" that can be found in other specified regulatory provisions, including § 135.323(a)(4) and (c). *See* 14 C.F.R. § 135.338(a)(3). Relevant flight instructor functions include conducting the required flight and/or simulator training courses generally and certifying "as to the proficiency and knowledge of the crewmember, flight instructor, or check airman concerned upon completion of that training…" respectively. *See* 14 C.F.R. § 135.323(a)(4) and (c). Therefore, at a minimum, the person administering the instructor observation check required

by § 135.340(a)(2) must ensure the instructor candidate can successfully perform the functions identified in § 135.323(a)(4) and (c). Since flight instruction is linked to a particular type, class or category aircraft (*see* § 135.338(a)(1)), the observer must be able to check whether an instructor candidate is giving proper instruction appropriate to the particular aircraft.

Moreover, the general qualifications for check airmen in § 135.337 specifically contemplate that the check airman become qualified in a particular aircraft type. *See* 14 C.F.R. § 135.337(a) (definition of check airman); § 135.337(b) (criteria for check airmen (airplane)); and § 135.337(c) (criteria for check airmen (simulator)). Since § 135.337 plainly links check airman qualifications to a particular aircraft type, then a check airman who conducts a § 135.340(a)(2) observation check must be qualified in the aircraft type in which the flight instructor is observed giving instruction.

This response was coordinated with the Air Transportation Division of Flight Standards Service. If you need further assistance, please contact our office at (202) 267-3073.