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

Office of the Chief Counsel

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

MAY 30 2013

Charles A. Spillner, President
CAS Aviation Services, LLC
110 Camelot Drive
Fayetteville, GA 30214

Dear Mr. Spillner:

This letter is in response to your request for clarification of FAA Notice 8900.197 which addresses the flight crewmember training provisions of part 135. The Notice, effective September 14, 2012, directs principal operations inspectors to "identify and correct part 135 certificate holders' training programs that provide credit for previous training and/or qualification received from a different certificate holder." The FAA published a notice in the Federal Register announcing the availability of Notice 8900.197 and asking for comment. *See* 77 Fed. Reg. 7010, 7010 (Feb. 10, 2012) (corrected version); 76 Fed. Reg. 80831, 80831 (Dec. 27, 2011) (original version).

The FAA stated that the notice was necessary to clarify the policy on credit for training because there had been "numerous inquiries by part 135 certificate holders regarding the acceptance of training/evaluations previously completed by a crewmember while in the employment of another certificate holder." *See* 77 Fed. Reg. at 7010. Therefore, Notice 8900.197 clarifies the FAA's policy that, with limited exception, the practice of "credit for training" is contrary to the rules of part 135.

You ask several questions regarding the notice focusing on: (1) the regulatory basis for the notice; and (2) the procedural aspects of the notice. We address these questions below.

Regulatory Basis for the Notice

Regarding the regulatory basis for the notice you ask what regulations do not permit a certificate holder to take credit for training and evaluations which an airman may have completed with another operator and whether § 135.324 specifically prohibits such a practice. As discussed below the FAA's disfavor of permitting credit for training can be found throughout the training rules of subpart H of part 135.

A common thread of part 135 training rules is that the certificate holder is responsible for ensuring that its crewmembers meet the standards for operating under that part and that its training program must be tailored to that certificate holder's operations. For example, in a reorganization of part 135, the FAA noted that a training program must "be adequate to insure that each required pilot and flight attendant is adequately trained to meet the

applicable knowledge and skill test requirements." *See* 34 Fed. Reg. 19130, 19132 (Dec. 3, 1969).

In 1978, the FAA enhanced the training requirements for crewmembers conducting part 135 operations by implementing rules designed to "closely parallel" the part 121 training requirements. *See* 42 Fed. Reg. 43490, 43506 (Aug. 29, 1977); *see also* 43 Fed. Reg. 46742, 46775 (Oct. 10, 1978). The FAA intended that each certificate holder establish training programs that are "appropriate to the operations to which each pilot and flight attendant is assigned." *See* 42 Fed. Reg. at 43506-07. Additionally, in the 1978 rule, the FAA stated that "each certificate holder must have an approved training program which includes . . . those items which are essential to every training program." 43 Fed. Reg. at 46775.

There are several current requirements that demonstrate the need for a crewmember to complete training with each certificate holder for which he or she will be flying. For example, certain aspects of crewmember basic indoctrination ground training, crew resource management training, and crewmember emergency training, as well as other training provisions, are specific to the certificate holder. *See, e.g.*, 14 C.F.R. §§ 135.329(a), 135.330(b), 135.331.

However, the agency also contemplated allowing credit for training in limited circumstances. A comment to the 1978 rule suggested "that credit be given in the approved training program for factory-approved ground schools or their equivalent." 43 Fed. Reg. at 46776. The FAA responded that the rule "allows the inclusion of this kind of valid training in the program presented to the FAA" for evaluation. Consistent with the 1978 rule, FAA Notice 8900.197 provides that operators may develop, and submit for FAA approval, multiple curricula including alternate curricula with variations in planned hours based on a crewmember's previous knowledge and skill. *See* FAA Notice 8900.197, para. 7(a)-(b).

You also questioned the agency's citation of 14 C.F.R. § 135.324 in the Notice asking where that section states that certificate holders are prohibited from accepting training and evaluations provided to an airman by another certificate holder. As stated in Notice 8900.197, § 135.324 "identifies what entities may conduct training, testing, and checking of a certificate holder's crewmembers." That section establishes that the only entities, other than the certificate holder, that may train, test, or check that certificate holder's crew members are another certificate holder or a part 142 training center under contract to that certificate holder. It does not permit a certificate holder to rely on training given to a pilot by another certificate holder if: (1) there is no contractual or other arrangement between the two certificate holders; and (2) such arrangement is not in the first certificate holder's FAA approved training program.

In a prior legal interpretation, we stated,

> The rulemaking [adding § 135.324] simply did not contemplate transferring training credits between . . . certificate holders for the purposes of satisfying the training requirements of a hiring certificate holder. Rather, the issue of "crediting" training was only discussed in the rulemaking documents in the

> context of expanding credit for training completed in a simulator that was traditionally required to be completed in flight.

See Legal Interpretation to Francis M. DeJoseph, from Mark W. Bury, Acting Assistant Chief Counsel for International Law, Legislation and Regulations (Feb. 28, 2013).

Moreover, reading § 135.324 independently from the regulatory scheme does not fully answer the questions that you have raised with regard to the FAA's authority to issue the Notice. This provision must also be read in the broader context of subpart H in part 135, the provisions of which were discussed earlier in this interpretation.

Finally, we emphasize that Notice 8900.197 is consistent with existing FAA policy regarding training programs which, like the regulation, place the responsibility for training crewmembers on the certificate holder. For example, initial new-hire training, which is completed by personnel "not previously employed by the operator" provides an "employee's first exposure to specific company methods, systems, and procedures . . . ." *See* Notice 8900.1 Vol. 3, Ch. 19, para. 3-1075(A), (G). Also, as stated in a letter dated June 28, 2010, which was attached to your request, the Director of the Flight Standards Service recognized that the FAA is aware this practice of credit for training is being promoted by some training organizations, but reaffirmed that the practice "is generally contrary to the intent as well as the technical provisions of 14 [C.F.R.] parts 121 and 135" as well as FAA policy.[1] *See* Letter to Damon Danneker, from John M. Allen, Director, Flight Standards Service (Jan. 28, 2010). Both parts 121 and 135 clearly outline the training program requirements with which each individual certificate holder is responsible to comply. As stated by the Director, "[f]or one operator to assume that another operator's training program meets these operator specific requirements . . . is not consistent with applicable regulations, operational control requirements, or the provisions of the operator's operating certificate." *Id.*

In summary, Notice 8900.197 is consistent with part 135 training requirements and FAA policy in not allowing credit for previous training or qualification received from a different certificate holder beyond of the limited scope of reduced training hour curricula discussed in paragraph 7 of the Notice.

Procedural Aspects of the Notice

You also ask several questions pertaining to the procedure used by the FAA when issuing Notice 8900.197. The Notice directed inspectors to review training programs to "identify and correct those training programs which erroneously issued credit for previous training or checking," and provided guidance to part 135 certificate holders "on constructing reduced hour training programs" based on a flightcrew member's previous experience. *See* 77 Fed. Reg. at 7010. As stated in the Federal Register Notice of Availability, and as discussed above, the policy articulated in Notice 8900.197 is consistent with FAA regulations governing air carrier training. *See id.*; Letter to Damon Danneker (Jan 28, 2010).

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[1] We note that this letter contemplates that some training provided by another air carrier may be accepted "[u]nder certain controlled conditions." This idea is also discussed in Notice 8900.197. *See* FAA Notice 8900.197, para. 7(b).

Accordingly, we do not agree with your contention that the agency promulgated new regulations through Notice 8900.197.

Moreover, when announcing the availability of Notice 8900.197 in the Federal Register the agency stated that although it generally does not request comment on internal Notices and orders it was doing so in this case. 77 Fed. Reg. at 7010. The Federal Register notice also stated that the agency would consider all comments filed in response to the notice. *Id.* at 7011. Twenty-eight comments were filed in response to the Notice. *See* FAA Docket No. 2011-1397, *available at* www.regulations.gov (last visited May 17, 2013). Consistent with the Federal Register notice, the FAA considered these comments. It then revised the Notice accordingly, and published the final notice on its website http://www.faa.gov/regulations_policies/orders_notices/index.cfm (last visited May 17, 2013).

This response was prepared by Bonnie C. Dragotto and Dean E. Griffith, attorneys in the International Law, Legislation and Regulations Division of the Office of the Chief Counsel. It was coordinated with the Air Transportation Division of Flight Standards Service. Please contact us at (202) 267-3073 if we can be of additional assistance.

Sincerely,

Mark W. Bury
Acting Assistant Chief Counsel for International
Law, Legislation and Regulations