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

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

MAY 22 2014

Brian Sutch
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Windsor Locks, Connecticut 06096

Dear Mr. Sutch,

This letter responds to your August 15, 2013 request for a legal interpretation of 14 C.F.R. §§135.337(f)(1) and 135.338(f)(1), which provide qualifications requirements that must be met by check airmen and flight instructors who seek to perform pertinent checking or instructor functions for a particular aircraft in a flight simulator, flight training device, or both. *See also* §§135.337(a)(2) and 135.338(a)(2). You indicated that Whitewind contracts with a part 142 training center for purposes of training and checking Whitewind flightcrew members for part 135 operations.

First, you asked generally whether your part 135 simulator instructors and check airmen who are employed by a part 142 training center may meet the applicable requirements provided in §§135.337(f)(1) and 135.338(f)(1) "by flying an airplane as a required crewmember under [part] 91 flight rules." Second, you asked what is meant by the phrase "type, class, or category aircraft" as used in §§135.337(f)(1) and 135.338(f)(1) and provided three hypotheticals for purposes of our analysis.[1]

Background

Sections 135.337(f) and 135.338(f) require simulator check airmen and flight instructors to meet certain qualifications in the 12-month period preceding the performance of simulator check airmen functions or prior to giving flight instruction, respectively. Simulator check airmen and flight instructors must either "[f]ly at least two flight segments as a required crewmember *for the*

[1] Definitions for type, class and category are set forth in 14 C.F.R. §1.1. (In the context of certification, ratings, privileges, and limitations of airmen: "type...means a specific make and basic model of aircraft, including modifications thereto that do not change its handling or flight characteristics. Examples include: DC–7, 1049, and F–27...; class...means a classification of aircraft within a category having similar operating characteristics. Examples include: single engine; multiengine; land; water; gyroplane; helicopter; airship; and free balloon...;" and "category...means a broad classification of aircraft. Examples include: airplane; rotorcraft; glider; and lighter-than-air.")

type, class, or category aircraft involved..." or "complete an approved line-observation program."[2] *See* §§135.337(f)(1)-(2) and 135.338(f)(1)-(2) (emphasis added).

In 1996, the FAA amended the check airman and flight instructor training, checking, and qualification requirements in parts 121 and 135 creating separate categories of requirements for simulator check airmen and instructors to allow experienced pilots who were unable historically to serve as a flight instructor or check airman due to medical ineligibility, to qualify for purposes of instruction or checking in a flight simulator or flight training device only. *See* Training and Qualification Requirements for Check Airmen and Flight Instructors, 61 Fed. Reg. 6898 (Feb. 22, 1996); Final Rule, 61 Fed. Reg. 30734-30735 (Jun. 17, 1996). To ensure an equivalent level of safety, new qualifications and training requirements were established for these "simulator check airmen" and "simulator flight instructors," which included the requirements currently found at §§135.337(f) and 135.338(f).

In the preamble to the 1996 final rule, the agency expressed its intent that simulator flight instructors and check airmen meet the requirements in §§135.337(f)(1) and 135.338(f)(1) "...by flying two flight segments as a required crewmember *for the type aircraft involved*, if medically qualified and certificated..." *Id.* at 30735 (emphasis added).

I. Whether flight segments completed under part 91 flight rules may fulfill the requirements in §§135.337(f)(1) and 135.338(f)(1).

First, you asked generally whether the simulator instructors and check airmen who conduct training and checking for your certificate may meet the applicable requirements provided in §§135.337(f)(1) and 135.338(f)(1) "by flying an airplane as a required crewmember under [part] 91 flight rules."

The regulations do not explicitly require a flightcrew member to meet the requirements in §§135.337(f)(1) and 135.338(f)(1) by completing flight segments *in part 135 operations*. Indeed, given that paragraph (f)(2) provides an alternative to the flight segment option and permits certain simulator check airmen and flight instructors to meet the requirement by completing a line-observation program, it appears the agency intended to add some flexibility into this requirements as compared to other qualifications, which are explicitly required to be completed in operations under a specific part. *See* e.g. 14 C.F.R. §135.244(b)("experience must be acquired in flight during commuter passenger carrying operations under this part").

The general purpose underlying these requirements is to ensure that check airmen and flight instructors continue to have experience flying under conditions that are comparable to what may be encountered in the respective operational environment. As provided in FAA guidance to inspectors, the preferred method for meeting these requirements is by flying on the line. *See* FAA Order 8900.1, Flight Standards Information System at Vol. 3, Ch. 20, Sect. 1, para. 3-1404. Sections 135.337(f)(1) and 135.338(f)(1) do not, however, specify that flying the two segments

[2] We note that your request for legal interpretation appears to assume the part 135 operator is opting to fulfill the requirement in paragraph (f)(1) as opposed to paragraph (f)(2). Therefore, we do not address the alternative option for meeting the requirement in paragraph (f)(2) in detail herein.

in a part 135 operation is the required or only method available for satisfying these experience requirements. Thus, to the extent that a simulator check airman or flight instructor is medically qualified and certificated to meet the requirements in §§135.337(f)(1) or 135.338(f)(1) by "fly[ing] at least two flight segments as a required crewmember," those flight segments may be conducted in an operation under part 135 or in an operation under part 91.

Accordingly, we conclude that simulator instructors and check airmen may fulfill the requirements of §§135.337(f)(1) and 135.338(f)(1) with flight segments conducted under part 91 operations.

II. The meaning of the phrase "type, class, or category aircraft" as used in §§135.337(f)(1) and 135.338(f)(1).

Second, you asked what is meant by the phrase "type, class, or category aircraft" as used in the qualification requirements set forth at §§135.337(f)(1) and 135.338(f)(1) and you provided three hypotheticals for purposes of our analysis.

A. Whether flight segments accomplished in a Cessna 172 aircraft (single-engine airplane) may be used to meet the qualification requirements for a simulator flight instructor or check airman to perform instruction or checking functions in a CL-604 (multi-engine jet) aircraft.

The answer to this hypothetical is no. Although the Cessna 172 and CL-604 are aircraft of the same category (airplane), they are not of the same class or type. For a simulator check airman or a simulator flight instructor to be qualified in both of these airplanes, the applicable recency requirement in §135.337(f)(1) or §135.338(f)(1), respectively, must be met with respect to each airplane. For additional guidance on whether meeting the requirement in one airplane may fulfill the requirement as to another airplane for purposes of §§135.337(f) and 135.338(f), we recommend that certificate holders contact their local Flight Standards District Office (FSDO) or principal operations inspector (POI).

B. Whether flight segments accomplished in a BD-700 aircraft (multi-engine large jet) may be used to meet the qualification requirements for a simulator flight instructor or check airman to perform instruction or checking functions in a CL-604 aircraft (multi-engine jet), in addition to meeting the qualifications requirements as to the BD-700.

The answer to this hypothetical is no. Although the BD-700 and CL-604 are both of the same category (airplane) and class (multi-engine jet), they are not the same type aircraft. To qualify as a simulator flight instructor or simulator check airman on both of these aircraft types, the applicable requirement in §135.337(f)(1) or §135.338(f)(1), respectively, must be met with respect to both airplanes.

C. Whether flight segments in an aircraft which does not require two pilots, and is flown single-pilot may be used to meet the requirements in §§135.337(f)(1) and 135.338(f)(1).

As we previously explained, the flight segments used to fulfill the requirements of §§135.337(f)(1) and 135.338(f)(1) may be conducted in part 91 operations. For the check airman or instructor to maintain qualifications to check or instruct in a particular aircraft, the flight segments must be conducted in the same category, class and type aircraft. If the type certification for the aircraft does not require two pilots, then the requirements of §§135.337(f)(1) and 135.338(f)(1) may be satisfied by a check airman or instructor in a single pilot operation under part 91. The regulation does not otherwise limit the operational conditions under which the flight segments must be conducted.

This response was prepared by Bonnie C. Dragotto, an attorney in the International Law, Legislation and Regulations Division of the Office of the Chief Counsel, and was coordinated with the Air Transportation Division of the Flight Standards Service. If you need further assistance, please contact our office at (202) 267-3073.

Sincerely,

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