U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

SEP 14 2018

Mark H. Mirkin, Esq.
Chief Legal Officer
FlyRight
7075 Aviation Blvd., Suite A
Concord, NC 20027

Re: Requirements for instructor (simulator) and check airmen (simulator) under 14 C.F.R. §§ 135.337(f) and 135.338(f).

Dear Mr. Mirkin,

This letter responds to your May 4, 2018 request for a legal interpretation of 14 C.F.R. §§ 135.337(f) and 135.338(f), which prescribe qualifications for check airman and flight instructors who perform checking or instructor functions for a particular aircraft in a flight simulator, flight training device, or both. You represented that FlyRight is an FAA-certificated part 142 training center providing FAA-approved training programs for BE-200, BE-300, CE-208, DHC-8-100, and DHC-8-300 type aircraft. First, you asked if FlyRight would fulfill the requirements of §§ 135.337(f) and 135.338(f) if its instructors (simulator) and check airmen (simulator) flew their 12-month two-segment requirements referenced in those regulations in a light piston twin engine. Second, you requested that this office revisit its May 22, 2014, legal interpretation of 14 C.F.R. §§ 135.337(f) and 135.338(f). *See* Legal Interpretation to Brian Sutch, from Mark W. Bury, Assistant Chief Counsel for International Law, Legislation and Regulations (May 22, 2014).

Section 135.337(f) provides in pertinent part:

A check airman (simulator) must accomplish the following:
(1) Fly at least two flight segments as a required crewmember for the type, class, or category aircraft involved within the 12-month preceding the performance of any check airman duty in a flight simulator; or
(2) Satisfactorily complete an approved line observation program ....

In addition, Section 135.338(f) provides that:

A flight instructor (simulator) must accomplish the following--

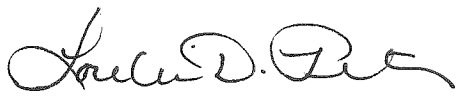
(1) Fly at least two flight segments as a required crewmember for the type, class, or category aircraft involved within the 12-month period preceding the performance of any flight instructor duty in a flight simulator; or
(2) Satisfactorily complete an approved line-observation program....

The answer to your question is no. A check airman (simulator) and flight instructor (simulator) must fly at least two flight segments for the type aircraft involved within the 12-month period preceding the performance to comply with § 135.337(f). As stated in the 2014 legal interpretation, recency of experience in a light piston engine would not satisfy the recency requirements for serving as a check airman or instructor in an aircraft of a different type, class, or category aircraft. Because the purpose of the requirements is for experience in a similar aircraft, the aircraft type must be the same. If the aircraft does not have a type rating, then the class and category, in that order, must be the same. As stated in the 1996 final rule, these paragraphs were intended to add flexibility to acquire the experience in a flight simulator but not to relax the existing requirements for experience in simulator aircraft. 61 Fed. Reg. 30734, 30735 (June 17, 1996).

The FAA has considered your request for reconsideration. However, the 2014 legal interpretation was the appropriate interpretation of §§ 135.337(f) and 135.338(f). As stated in the 2014 interpretation, you may consult with your local FSDO or CMO for guidance on whether meeting the requirement in one aircraft may fulfill the requirement in another aircraft.

This response has been coordinated with the Air Transportation Division of Flight Standards Service. If you need further assistance, please contact our office at (202) 267-7728.

Sincerely,



Lorelei D. Peter
Assistant Chief Counsel for Regulations, AGC-200

FLYRIGHT
EXPERT TRAINING FOR SAFE FLYING

May 4, 2018

Mark W. Bury
Deputy Chief Counsel – Business Operations
Federal Aviation Administration
800 Independence Ave. S.W.
Washington, DC 20591

Re: Regulations interpretation

Dear Mr. Bury,

I serve as Chief Legal Officer for FlyRight Inc., an FAA-certificated Part 142 simulator training center providing FAA-approved training programs for BE-200, BE-300, CE-208, DHC-8-100 and DHC-8-300 type aircraft. FlyRight provides training and checking services to Part 135 air carriers under contract.

I am writing to discuss an important issue arising under Sections 135.337(f) and 135.338(f) of the *Code of Federal Regulations* vis a vis a legal interpretation you rendered in May 2014 to The Whitewind Company.

Sec. 135.337(f) provides, in pertinent part, that "A check airman (simulator) must accomplish the following: (1) Fly at least two flight segments as a required crewmember for the type, class, or category aircraft involved within the 12-months preceding the performance of any check airman duty in a flight simulator…." [color added], and Sec. 135.338(f) provides, in pertinent part, that "A flight instructor (simulator) must accomplish the following: (1) Fly at least two flight segments as a required crewmember for the type, class, or category aircraft involved within the 12-month period preceding the performance of any flight instructor duty in a flight simulator…." [color added].

Based upon that key word – or -- in both regulation provisions, FlyRight believes it would be compliant by having its Part 135 flight instructors and check airmen current with respect to their 12-month two-segment requirements by flying the two segments in a light piston twin engine. As you may know, piston-powered aircraft are readily available for rent.

Our belief based on the language of the regulations is shaken by Part II of the Whitewind legal interpretation wherein your answers to the writer's hypotheticals imply that a check airman must fly the two segments for the type, class and category aircraft involved within the 12-months preceding the performance of any check airman duty in a flight simulator [color added] and that a flight instructor must fly the two segments for the type, class and category aircraft involved within the 12-month period preceding the performance of any flight instructor duty in a flight simulator. [color added].

FlyRight and those of its competitors with whom it has conferred have struggled over the last four years to comply with the Whitewind legal interpretation, incurring considerable expense and difficulty because access to turbine-powered aircraft for contract airmen is challenging; they are rarely offered for rent and when they are available the expense is prohibitive.

On behalf of itself and other companies similarly situated, FlyRight respectfully asks you to revisit the Whitewind legal interpretation and to reverse what we suspect was an unintentional burden placed on the industry, affirming that the use of the word – or – in the cited regulations can be relied upon by us and the training centers with whom we compete.

Thank you for your consideration.

Very truly yours,
FlyRight, Inc.

Mark H. Mirkin, Esq.
Chief Legal Officer