Surviving the Audit

Wednesday, January 20th | 3:00pm – 5:00pm

PRESENTED BY:
Kent Jackson, Partner, Jackson & Wade, LLC
Kali Hague, Attorney, Jackson & Wade, LLC
9 Tips to Ace an Audit

1. Goal of Audit
2. Types of Audits
3. Focus of Audit
4. Audit Prep
5. Preparing for the Auditor
6. The Audit
7. Gotcha!
8. Audit Findings
9. Appeals
Goal of the Audit
Or….Why are you doing this anyway?

• Mandatory FAA onsite inspection
• Logo on your website
• Objective Review of Safety and Operation
  – Legal Background?
  – Confidentiality Issues?
• Customer Requested
Audit Flavors

- FAA
  - Government
- IS-BAO
  - Non-governmental association
- ACSF
  - Non-profit
- ARG/US, Wyvern
  - For-profit
- Other
  - For-profit
Audit Scope

FAA

• Optional?: “No Thank You”—Not an option
• Surprise or Scheduled: Either
• Goal: Regulatory Compliance
• Scope: Generally narrow in scope
• Guidelines: FAA Inspector follows FSIMS (Flight Standards Information Management System) guidelines
• Findings: Noted in PTRS (Program Tracking and Reporting System)
• Result: No action, Letter of Correction, Letter of Investigation, Suspension, Emergency Revocation

Sources: fsims.faa.gov
Scope of Audit

IS-BAO

- IS-BAO: International Standard for Business Aircraft Operations
- Developed by IBAC: International Business Aviation Council
  - IBAC founded by NBAA, EBAA, CBAA, BBGA, etc.
- IBAC is an international, non-governmental association which represents, promotes and protects the interests of business aviation in international policy and regulatory forums.
Scope of Audit

ACSF, ARG/US, Wyvern

- Optional: only audited if operator is or wants to be rated.
- No surprise audits.
- Goal: Higher standard than just regulatory compliance.
- Guidelines: Auditor uses prescribed audit guidelines.
- Audit findings presented in report.
- Timeframe to correct non-compliant items.
Question

When the FAA schedules an inspection, you should:

a. Review FSIMs to find the inspector’s guidance for the intended inspection (e.g. PRIA compliance)

b. Do nothing. The inspector should evaluate how you really operate.

c. Bake cookies.

d. Both a. and c.
Audit Prep

If they are from the FAA, they are not here to help you

• Regardless of the type of audit, Prepare
• Know your audit, know your auditor
  – Find out as much as you can before the audit
The Auditor

The auditor is **NOT** your best friend.

- Staff dressed appropriately.
- Clean Floors.
- Fresh pot of coffee.
- Comfortable place to work.
- Internet Access.

Sources: Kent’s Mother and other strongly opinionated women over the age of 80
The Audit

- Hard copies of all pertinent records and manuals.
- Records are organized.
- Old records are archived.
  - “We can get that for you, but it is archived and it might take a couple weeks.”
- Tax or other interesting but irrelevant documents are not mixed in with relevant documents
- Accountable Executive, DO, DM, CP available to answer questions.
The Audit

Common Problem Areas

- Rest and Duty
- Drug Policy and Hiring
- Training Records
- SMS
- Manuals
- Keeping / Archiving / Destroying Records
The Audit (and common problem areas)

Rest and Duty

• Can you explain your rest & duty program:
  – Simply
  – Without smiling or winking
• Put very simply: Do your pilots know when they can drink a beer?
• How do you deal with passenger/weather delays and other “unforeseen circumstances”?
• Does your documentation show “prospective rest”?
The Audit

Rest and Duty

• 2015 Rest and Duty FAA Legal Interpretation (Orellena)
  – Not new.
  – The FAA has consistently required rest to be:
    • Continuous
    • Determined prospectively (i.e. known in advance) and
    • Free from all restraint by the certificate holder
  – No rolling duty periods

• Gallup Interpretation (July 12, 2014)
  – Keeping Duty Time Logs

Sources: FARs Explained Charter Edition by Kent S. Jackson & Kali M. Hague
The Audit

Rest and Duty

• One call. No duty to answer. Still Ok.
  – Aviators for Safe & Fairer Regulation, Inc. v. FAA, 221 F.3d 222, 228-29 (1st Cir. 2000).
• Tail End Ferry: deadhead time is generally not counted as duty time.
  – Legal Interpretation January 28, 2015
• Both the crew and the certificate holder would be in violation of §91.13(a) if crewmembers fly when their state of fatigue would potentially endanger others.
  – Legal Interpretation, March 30, 1992

Sources: FARs Explained Charter Edition by Kent S. Jackson & Kali M. Hague
Question

The crew wants to dead head home after a full duty day. Can they?

a. Yes, “tail end ferry” is not considered duty.
b. Yes, but only if they are not too tired.
c. No, they cannot exceed duty time just because the airplane is empty.

Sources: FARs Explained Charter Edition by Kent S. Jackson & Kali M. Hague
The Audit

Drug Policy and Hiring

• A mistake by your consortium is a violation against your company
  – You can delegate the tasks, but not the responsibility
  – However, it is not practical to attempt to comply without a consortium

• Pre-employment testing:
  – Any job offer must be contingent on receiving negative test results

• Who is “safety-sensitive”?
  – You might think, when in doubt, test. DON’T.
    • The FAA can impose harsh fines for testing the wrong people

Sources: FARs Explained Charter Edition by Kent S. Jackson & Kali M. Hague
The Audit
Drug Policy and Hiring

Safety Sensitive, §120.105:

(a) Flight crewmember duties.
(b) Flight attendant duties.
(c) Flight instruction duties.
(d) Aircraft dispatcher duties.
(e) Aircraft maintenance and preventive maintenance duties.
(f) Ground security coordinator duties.
(g) Aviation screening duties.
(h) Air traffic control duties.
(i) Operations control specialist duties.

Sources: FARs Explained Charter Edition by Kent S. Jackson & Kali M. Hague
Question

Your drug abatement consortium fails to include three of your pilots in the random drug testing pool. If the FAA discovers this error, could the FAA impose a civil penalty on your company?

a. No, you told the consortium to include the pilots, it was the consortium’s mistake.

b. No, the pilots live in Colorado, so they can smoke pot anyway.

c. Yes, your company can delegate duties to the consortium, but your company retains responsibility for drug abatement program compliance.

Sources: FARs Explained Charter Edition by Kent S. Jackson & Kali M. Hague
The Audit

Training Records

• Can an inspector/auditor easily locate required records?
  – Unorganized records can result in a charge that you are not maintaining the required records

• Does your records system guide users to complete all required forms?
  – It should
  – If an inspector/auditor sees this, they are more likely to trust your records
The Audit

Training Records

• Just like your drug program, your training program is your responsibility
  – You can delegate the tasks, but not the responsibility
  – Are you auditing your training provider(s)?
• If your training hours are unrealistic, revise your training program
  – Don’t commit fraud by pencil-whipping training time.
The Audit

Training Records

• FAR § 135.324 allows contract training:
  – 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. (Legal Interpretation, May 30, 2013)
Question

You hire a pilot to fly an aircraft that is identical to the one that he flies for another air carrier. Can you rely on their training?

a. Yes, no need to waste time and money putting him through your identical training program.

b. No, the pilot must complete your program.

Sources: FARs Explained Charter Edition by Kent S. Jackson & Kali M. Hague
The Audit

SMS

• Is SMS being used?
  – It is easy to tell
  – “Records pertaining to identified or reported hazards/threats are maintained”
  – So, you have never identified any hazards?

• Worst case scenario:
  – Hazard identified
  – No mitigation
  – Accident
The Audit
Manuals

- Policy vs. the HOW.
  - Manuals are not aspirational.
- Revision Control.

Sources: enter sources here
The Audit
Keeping Records

• How long do you keep records?
• When can you archive records?

Sources: FSIMS Volume 3, Chapter 31, Section 3 Table: Record Retention
<table>
<thead>
<tr>
<th>RECORD TYPE</th>
<th>APPLICABLE 14 CFR</th>
<th>MINIMUM RETENTION PERIOD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Airman Certificate Information</td>
<td>§ 135.63</td>
<td>Permanent</td>
</tr>
<tr>
<td>Airman Medical Information</td>
<td>§ 135.63</td>
<td>Retain current information</td>
</tr>
<tr>
<td>Aeronautical Experience</td>
<td>§ 135.63</td>
<td>Permanent</td>
</tr>
<tr>
<td>Duty Assignment</td>
<td>§ 135.63</td>
<td>Retain for current aircraft</td>
</tr>
<tr>
<td>Basic Indocitation</td>
<td>§ 135.329</td>
<td>Permanent</td>
</tr>
<tr>
<td>Initial Ground Training</td>
<td>§§ 135.63 and 135.345</td>
<td>Permanent</td>
</tr>
<tr>
<td>Differences Ground Training</td>
<td>§ 135.341</td>
<td>Retain for current aircraft</td>
</tr>
<tr>
<td>Transition Ground Training</td>
<td>§ 135.345</td>
<td>Retain for current aircraft</td>
</tr>
<tr>
<td>Upgrade Ground Training</td>
<td>§ 135.345</td>
<td>Permanent</td>
</tr>
<tr>
<td>Recurrent Ground Training</td>
<td>§§ 135.63 and 135.351</td>
<td>14 calendar-months¹</td>
</tr>
<tr>
<td>Initial Flight Training</td>
<td>§§ 135.63 and 135.347</td>
<td>Permanent</td>
</tr>
<tr>
<td>Differences Flight Training</td>
<td>§ 135.347</td>
<td>Retain for current aircraft</td>
</tr>
<tr>
<td>Transition Flight Training</td>
<td>§ 135.347</td>
<td>Retain for current aircraft</td>
</tr>
<tr>
<td>Upgrade Flight Training</td>
<td>§ 135.347</td>
<td>Permanent</td>
</tr>
<tr>
<td>Recurrent Flight Training</td>
<td>§§ 135.63 and 135.351</td>
<td>14 calendar-months¹</td>
</tr>
<tr>
<td>Emergency Training - Initial</td>
<td>§§ 135.63 and 135.331</td>
<td>Permanent</td>
</tr>
<tr>
<td>Emergency Training - Recurrent</td>
<td>§§ 135.63 and 135.351</td>
<td>14 calendar-months¹</td>
</tr>
<tr>
<td>Crew Resource Management (CRM) Training - Initial</td>
<td>§§ 135.63 and 135.330</td>
<td>Permanent</td>
</tr>
<tr>
<td>CRM Training - Recurrent</td>
<td>§§ 135.63 and 135.330</td>
<td>14 calendar-months¹</td>
</tr>
<tr>
<td>Ground Deice/Anti-Ice Training and Testing - Initial</td>
<td>§§ 135.227 and 121.629</td>
<td>Permanent</td>
</tr>
<tr>
<td>Ground Deice/Anti-Ice Training and Testing - Recurrent</td>
<td>§§ 135.227 and 121.629</td>
<td>14 calendar-months¹</td>
</tr>
<tr>
<td>Requalification Training</td>
<td>§ 135.321</td>
<td>14 calendar-months¹</td>
</tr>
<tr>
<td>Polar Operations Training - Initial</td>
<td>§ 135.98</td>
<td>Permanent</td>
</tr>
<tr>
<td>Hazardous Materials (Hazmat) Training - Initial and Recurrent</td>
<td>§§ 135.63 and 135.507</td>
<td>3 calendar-years¹</td>
</tr>
<tr>
<td>Written or Oral Knowledge Test - Initial and Recurrent</td>
<td>§ 135.293</td>
<td>14 calendar-months¹</td>
</tr>
<tr>
<td>Competency Check - Initial and Recurrent</td>
<td>§§ 135.63 and 135.293</td>
<td>14 calendar-months¹</td>
</tr>
<tr>
<td>Pilot-in-Command (PIC) Instrument Proficiency Check (IPC)</td>
<td>§§ 135.63 and 135.297</td>
<td>12 calendar-months or as necessary to show compliance with § 135.297(e) and (f) if qualified in more than one type of aircraft</td>
</tr>
<tr>
<td>PIC Line Check</td>
<td>§§ 135.63 and 135.299</td>
<td>14 calendar-months³</td>
</tr>
<tr>
<td>PIC Operating Experience (OE)</td>
<td>§ 135.244</td>
<td>Retain for current aircraft</td>
</tr>
<tr>
<td>RECORD TYPE</td>
<td>APPLICABLE 14 CFR</td>
<td>MINIMUM RETENTION PERIOD</td>
</tr>
<tr>
<td>------------------------------------------------</td>
<td>-----------------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>PIC Recent Takeoff and Landing Experience</td>
<td>§ 135.247</td>
<td>90 calendar-days</td>
</tr>
<tr>
<td>Second-in-Command (SIC) Recent Instrument Experience</td>
<td>§§ 61.57(c) and 135.245</td>
<td>6 calendar-months</td>
</tr>
<tr>
<td>Air Transportation Ground Instructor</td>
<td>§ 135.323</td>
<td>Permanent</td>
</tr>
<tr>
<td>Air Transportation Flight Instructor Initial Ground and Flight Training</td>
<td>§§ 135.63 and 135.340</td>
<td>Permanent</td>
</tr>
<tr>
<td>Air Transportation Flight Instructor Transition Ground and Flight Training</td>
<td>§§ 135.63 and 135.340</td>
<td>Retain for current aircraft</td>
</tr>
<tr>
<td>Air Transportation Flight Instructor (Simulator) Line Observation Program</td>
<td>§ 135.338</td>
<td>14 calendar-months</td>
</tr>
<tr>
<td>Air Transportation Flight Instructor Observation</td>
<td>§ 135.340</td>
<td>26 calendar-months</td>
</tr>
<tr>
<td>Check Pilot Initial Ground and Flight Training</td>
<td>§§ 135.63 and 135.339</td>
<td>Permanent</td>
</tr>
<tr>
<td>Check Pilot Transition Ground and Flight Training</td>
<td>§§ 135.63 and 135.339</td>
<td>Retain for current aircraft</td>
</tr>
<tr>
<td>Check Pilot (Simulator) Line Observation Program</td>
<td>§ 135.337</td>
<td>14 calendar-months</td>
</tr>
<tr>
<td>Check Pilot Observation</td>
<td>§ 135.339</td>
<td>26 calendar-months</td>
</tr>
<tr>
<td>Check Pilot Authorization</td>
<td>§§ 135.63 and 135.337</td>
<td>Retain for current aircraft</td>
</tr>
<tr>
<td>Aircrew Program Designee (APD) Designation</td>
<td>Part 183</td>
<td>Retain for current aircraft</td>
</tr>
<tr>
<td>Release from Employment for Physical or Professional Disqualification</td>
<td>§ 135.63</td>
<td>12 calendar-months</td>
</tr>
<tr>
<td>Flight, Duty, and Rest</td>
<td>§§ 135.63 and Part 135 Subpart F</td>
<td>12 calendar-months</td>
</tr>
<tr>
<td>RECORD TYPE</td>
<td>APPLICABLE 14 CFR</td>
<td>MINIMUM RETENTION PERIOD</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>-------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>Basic Indoctration</td>
<td>§ 135.329</td>
<td>Permanent</td>
</tr>
<tr>
<td>Initial Ground Training</td>
<td>§ 135.349</td>
<td>Permanent</td>
</tr>
<tr>
<td>Differences Ground Training</td>
<td>§ 135.341</td>
<td>Retain for current aircraft</td>
</tr>
<tr>
<td>Transition Ground Training</td>
<td>§ 135.349</td>
<td>Retain for current aircraft</td>
</tr>
<tr>
<td>Recurrent Ground Training</td>
<td>§ 135.351</td>
<td>14 calendar-months^2</td>
</tr>
<tr>
<td>Emergency Training - Initial</td>
<td>§ 135.331</td>
<td>Permanent</td>
</tr>
<tr>
<td>Emergency Training - Recurrent</td>
<td>§ 135.351</td>
<td>14 calendar-months^2</td>
</tr>
<tr>
<td>Crew Resource Management (CRM) Training - Initial</td>
<td>§ 135.330</td>
<td>Permanent</td>
</tr>
<tr>
<td>CRM Training - Recurrent</td>
<td>§ 135.330</td>
<td>14 calendar-months^2</td>
</tr>
<tr>
<td>Hazardous Materials (Hazmat) Training - Initial and Recurrent</td>
<td>§ 135.507</td>
<td>3 calendar-years^1</td>
</tr>
<tr>
<td>Knowledge and Competency Test - Initial and Recurrent</td>
<td>§ 135.295</td>
<td>14 calendar-months^3</td>
</tr>
<tr>
<td>Air Transportation Ground Instructor</td>
<td>§ 135.323</td>
<td>Permanent</td>
</tr>
<tr>
<td>Duty and Rest</td>
<td>§§ 135.273 and 135.63</td>
<td>12 calendar-months</td>
</tr>
</tbody>
</table>
Question

You realize that your rest & duty records will show a duty violation for a crew that just ran off the end of the runway last night. What will happen if you set fire to the records area of the office?

a. The FAA will never be able to prove a violation and you will always get free drinks every time that you tell the story.

b. You will go to jail for arson, obstruction of justice, terrorism, etc.
Audit Findings

…And what to do with them

• Old English law: Every Dog Gets One Bite.
  – Once your company makes a particular kind of mistake, it better not bite you again
  – The Courts will go after the second bit far worse than any agency if someone is injured

• Don’t make the same mistake twice.
  – Make new ones!
Audit Appeal

• Perhaps a standard is impossible for your particular operation to comply with, it is totally inconsistent with your operations model, or you just don’t like it. Keep in mind all of these standards exist because someone lobbied for the item to be included.

• If you disagree with a standard:
  – Lobby the audit standard organization for an exemption;
  – Lobby the audit standard organization to change the standard itself (this is often a long process as most of the customer advisory boards or review boards only meet once a year); or
  – Convince the auditor you do something else that meets or exceeds the INTENT of the standard.
Questions?

Kent S. Jackson and Kali M. Hague
913-338-1700
www.jetlaw.com