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

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Dear Ms. Beale and Mr. Wentz:

This responds to your joint request, dated April 27, 2007, for an interpretation of section 135.301(b) of the Federal Aviation Regulations.

You provided the following facts and background information. A pilot, who was a Second-in-Command (SIC) at an Air Carrier, chooses to transition from one aircraft type to a different aircraft type and, at the same time, upgrade from SIC to Pilot-in-Command (PIC) in that new aircraft. The pilot received training for the transition and for the upgrade, including simulator training. The pilot completed transition training and obtained a type rating in the new aircraft. Subsequently, the pilot failed the PIC line check required by 14 CFR § 135.299 in the new aircraft. The failure was not one which would cause the FAA to re-examine the pilot's proficiency under 49 USC § 44709.

Question 1.

In the fact pattern above, where a pilot fails a section 135.299 PIC line check after obtaining a type rating in the new aircraft (and/or holds a type rating in another aircraft operated by the certificate holder), does 14 CFR § 135.301(b) prohibit the certificate holder from using that pilot as a flight crewmember in operations under Part 135 until the pilot satisfactorily passes the PIC line check?

Answer 1.

Subpart G of Part 135 prescribes crewmember testing requirements. Section 135.301(b) of Subpart G states:

If a pilot being checked under this subpart fails any of the required maneuvers, the person giving the check may give additional training to the pilot during the course of the check. In addition to repeating the maneuvers failed, the person giving the check may require the pilot being checked to repeat any other maneuvers that are necessary to determine the pilot's proficiency. If the pilot being checked is unable to demonstrate satisfactory performance to the person conducting the check, the certificate holder may not use the pilot, nor may the pilot serve, as a flight crewmember in operations under this part until the pilot has satisfactorily completed the check.

The preamble to the proposed rule (14 CFR § 135.301 was proposed as 14 CFR § 135.233) states "since this procedure (providing additional training during a check) is currently followed under 121.441 without a derogation of safety, the FAA believes it should be permitted under part 135. . . . This new paragraph would also prohibit use in Part 135 operations of a pilot who is unable to demonstrate satisfactory performance until such time as he passes the check." 42 FR 43505 (August 29, 1977). The preamble to the final rule (14 CFR §135.301) states "(i)f a person is unable to pass the required check, then this is all the more reason why that person should not serve as a crewmember in operations under revised part 135 until that person has satisfactorily completed the check." 43 FR 46775 (October 10, 1978).

Since the pilot failed the PIC line check in the new aircraft, the certificate holder may not use that person as a PIC, nor may that person serve as a flight crewmember, in operations under Part 135 until that person has satisfactorily completed a PIC line check in an aircraft designated by the Part 135 operator. The operator can require use of either the pilot's former aircraft, or the "new," *aircraft* for the PIC line check. Assuming that the pilot, in the past 12 calendar months, had not successfully passed a section 135.299 line check in any airplane then both section 135.299(a) and section 135.301(b) would prohibit the carrier from using the pilot in Part 135 operations.

Since our answer to your question no. 1 is "yes," 14 CFR § 135.301(b) prohibits the certificate holder from using the pilot as a flight crewmember in operations under Part 135 until that pilot satisfactorily passes the PIC line check, we have not answered questions two and three which required a "no" answer to question no. 1.

This response has been prepared by Cecile O'Connor, an attorney in the Regulations Division of the Office of the Chief Counsel, and has been coordinated with the Air Transportation Division of Flight Standards Service. If you have additional questions regarding this matter, please contact us at your earliest convenience at (202) 267-3073.

Sincerely,

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