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

Office of the Chief Counsel

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

SEP 30 2008

Mrs. Leslie A. Morris
[redacted]

Dear Mrs. Morris

This responds to your inquiry whether a pilot can accept a clearance from air traffic control (ATC) for a standard instrument departure procedure (SID) or an Obstacle Departure Procedure (ODP), with a non-standard climb gradient if the pilot knows that the aircraft cannot meet the climb gradient if an engine is lost on takeoff. You reference aircraft operations under Title 14 of the Code of Federal Regulations parts 91 and 135. (14 CFR parts 91 and 135).

Section 91.175(f)(4) applies to a person operating an aircraft under part 121, 125, 129 or 135 and provides that "Notwithstanding the requirements of paragraph (f)(3) of this section, no pilot may takeoff from an airport under IFR....unless for part 121 and 135 operators, the pilot uses a takeoff obstacle clearance or avoidance procedure that ensures compliance with the applicable airplane performance operating limitation requirements under part 121, subpart I or part 135, subpart I, for takeoff at that airport."

Subpart I of Part 135 specifies the takeoff limitations for the three categories of aircraft that are governed by this part.[1] If a pilot accepts an ATC clearance for a departure procedure for which that aircraft is unable to meet the necessary requirements in the event of engine failure and conducts the operation, it would place the pilot in noncompliance with the applicable regulation in subpart I of part 135.

For any operation, regardless of whether conducted under part 91 or 135, the pilot must preplan to determine whether the aircraft can meet the climb gradient required by the departure procedure and consider both the effect of degraded climb performance and the action to take in the event of engine failure during the departure.[2] It is the pilot's responsibility to determine whether the operation can be conducted within the operating limitations specified for the particular aircraft.

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[1] Since you did not specify a particular aircraft category, we direct you to review the following sections: § 135.367--large transport category airplanes: reciprocating engine powered; § 135.379--large transport category airplanes, turbine engine powered; and § 135.389-- large transport category airplane. These sections specify various takeoff requirements including obstacle clearance requirements.

[2] See the Aeronautical Information Manual, paragraph 5-2-8.

I hope this information responds to your questions. This response has been prepared by Lorelei Peter and has been coordinated with the Air Transportation Division, Flight Standards Service. If you have questions, please contact Ms. Peter at 202-267-3134.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200