Federal Aviation Administration

Memorandum

Date: AUG 1 1 2011

To: Steve Kane, Manager, AFS-250

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

Prepared by: Dean E. Griffith, Attorney, AGC-220

Subject: Legal Interpretation of 14 C.F.R. §§ 135.293(b) and 135.297(c).

This memorandum is in response to AFS-250's September 22, 2009 request for legal interpretation of 14 C.F.R. §§ 135.293 and 135.297. Your first question pertains to the aircraft in which a § 135.293 competency check must be performed. Your second question relates to the types of instrument approaches required to be demonstrated during a § 135.297(c) instrument proficiency check.

First, you ask a question pertaining to § 135.293(b) regarding the class and type of aircraft required for a pilot's annual competency check. Specifically you ask whether a pilot who operates a single-engine, turboprop deHavilland DHC-3 Otter airplane in part 135 operations would need to perform a competency check in the same class of aircraft, or the same type of aircraft as set forth in § 135.293(b). As discussed below, the pilot would perform the competency check in the same class of aircraft.

Section 135.293(b) establishes the competency check requirements for pilots conducting part 135 operations. The regulation states that a pilot must pass a competency check "in that class of aircraft, if single-engine airplane other than turbojet, or that type of aircraft, if helicopter, multiengine airplane, or turbojet airplane, to determine the pilot's competence in practical skills and techniques in that aircraft or class of aircraft." § 135.293(b).

Therefore, the aircraft that the pilot will operate in part 135 service dictates whether the 135.293(b) check must be performed in the same class or same type of aircraft. The DHC-3 Otter, about which you inquired, is a single-engine, turboprop powered, aircraft. Although turboprop and turbojet engines are both turbine powered, they are distinct engines and the terms are not interchangeable. *See, e.g.*, § 121.400(b) (placing turbopropeller powered and turbojet powered aircraft in different groups for training purposes); Legal Interpretation to AFS-200, from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division (Apr. 17, 1992). Accordingly, the pilot could perform the § 135.293(b) competency check in the same class of aircraft. This would include "an aircraft within a category having similar operating

characteristics. Examples include: single engine; multi-engine; land; water . . . ." *See* § 1.1 (definition of "class").[1] We note that a competency check performed in a DHC-3 that is equipped for land operations would not be in the same class as a DHC-3 that is equipped for water operations. *See* § 1.1 (definition of "class") (establishing that land and water aircraft are in separate classes).

Your second question asks whether a pilot must demonstrate a precision approach during a § 135.297 instrument proficiency check if that pilot will not be authorized to conduct precision approaches in part 135 operations. The section governing instrument proficiency checks seems to contain a conflict. Section 135.297(c) states that the "flight check includes . . . standard instrument approaches involving navigational facilities which that pilot is to be authorized to use." Section 135.297(c)(1)(i) and (c)(1)(ii) later state that depending on the aircraft to be operated, "[t]he instrument proficiency check must . . . include the procedures and maneuvers for an airline transport pilot certificate . . . or . . . a commercial pilot certificate with an instrument rating, and if required, for the appropriate type rating." That provision implies that the practical test standards, which would require demonstration of both precision and non-precision instrument approach procedures, not the pilot's authorized operations, dictate what must be demonstrated during the § 135.297(c) instrument proficiency check.

After reviewing the regulation and its history, we have determined that the instrument proficiency check need only include standard instrument approaches involving navigational facilities which the pilot is to be authorized to use in part 135 operations.

Sections 135.297(c)(1)(i) and (c)(1)(ii) must be read within the context of the regulation as a whole. The main text of paragraph (c) limits the types of instrument approaches that must be performed on an instrument proficiency check to those that the pilot would be authorized to use. Section 135.297(c)(1)(i) and (c)(1)(ii) provide additional information regarding the procedures and maneuvers to be performed during an instrument proficiency check. It would be inconsistent to read §§ 135.297(c)(1)(i) and (c)(1)(ii) as expanding the requirements which were specifically limited in the preceding text of paragraph (c).

Further, the regulatory history supports this reading. The FAA added paragraph (c)(1) to § 135.297 to ensure that each pilot in command is adequately tested on the procedures and maneuvers for the particular pilot certificate held and the privileges exercised under § 135.243. *See* 43 Fed. Reg. 46742, 46774 (Oct. 10, 1978). This paragraph was added at the same time the FAA changed § 135.297(b) to specify that pilots must demonstrate an instrument approach procedure using ILS, a very high frequency omnirange station (VOR), and a nondirectional beacon (NDB) every six months. *See id.*; 43 Fed. Reg. 46802.

However, in 1981, the FAA amended § 135.297(b) to relax the requirement that pilots demonstrate ILS, VOR and NDB approach procedures during an instrument proficiency check. 46 Fed. Reg. 30968, 30970 (June 11, 1981). This change was proposed partly in response to feedback from operators that the, then current, requirement for pilots to successfully demonstrate these instrument approach procedures was too restrictive and required an "unreasonable

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[1] For clarity, this memorandum does not address § 135.293(b)'s requirements pertaining to competency checks performed in helicopters because the facts presented for interpretation relate to airplanes.

expenditure of aircraft and pilot operational expense to demonstrate proficiency on a facility which is not used by some certificate holders." *See* 45 Fed. Reg. 80450, 80454 (Dec. 4, 1980) (NPRM). The FAA cited feedback from some certificate holders that "they have no need to use ILS facilities and the nearest ILS facility is located a significant distance from the certificate holder's operations base," *id.*, and "a substantial cost is involved in demonstrating ILS, NDB, and VOR approaches." 46 Fed. Reg. 30970. Accordingly, the rule allows demonstration of "only those instrument approach procedures which the certificate holder desires to use . . . ." 45 Fed. Reg. 80454; *see* 46 Fed. Reg. 30970. Notably, the FAA stated that "[t]he certificate holder may elect to use only one kind of approach or several." 46 Fed. Reg. 30970.

As noted in the preamble to the final rule, the instrument approach procedures a certificate holder is authorized to use are listed in the certificate holder's operations specifications. *See* 46 Fed. Reg. 30970 (June 11, 1981). It follows that if a certificate holder is not authorized in its operations specifications to use an ILS, or other type of precision approach, then the pilot will not need to demonstrate that type of approach during a § 135.297 instrument proficiency check. We note that if the pilot does not demonstrate a precision approach during the instrument proficiency check then he or she will not be able to conduct a precision approach when conducting part 135 operations. § 135.297(b) ("No pilot may use any type of precision instrument approach procedure under IFR unless, since the beginning of the 6th calendar month before that use, the pilot satisfactory demonstrated that type of approach procedure.").

In summary, the FAA implemented a flexible requirement for the § 135.297 instrument proficiency check that requires a pilot to demonstrate only the instrument approach procedures he or she will be performing in part 135 operations, as listed in the certificate holders operations specifications. Therefore, a pilot would not be required to perform standard instrument approaches involving navigational facilities a pilot is not to be authorized to use during an instrument proficiency check.

This response was prepared by Dean E. Griffith, Attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the Air Transportation Division of Flight Standards Service.