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

Office of the Chief Counsel

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

AUG - 2 2011

David Lewis
[redacted]

Dear Mr. Lewis:

This letter is in response to your September 11, 2009 request for interpretation of 14 C.F.R. § 135.223(b). Your letter contains two questions. First, you ask in what circumstances must a pilot consider § 135.223(b)(1). Second, you ask why § 135.223(b)(1) is included in the rule and why pilots may not rely only on § 135.223(b)(2) when planning IFR operations.

Section 135.223 establishes the alternate airport fuel-planning requirements for pilots conducting IFR operations. Paragraph (a) requires a pilot operating in IFR conditions to carry enough fuel to: (1) complete the flight to the first airport of intended landing, (2) fly from that airport to the alternate airport, and (3) fly after that for 45 or 30 minutes depending on whether operating an airplane or a helicopter.

Section 135.223(b) relieves operators from the requirement to carry enough fuel to fly from the first airport of intended landing to the alternate airport if the first airport has a part 97 standard instrument approach procedure and the weather reports or forecasts indicate that the ceiling and visibility will meet certain requirements within one hour before and after the estimated time of arrival. Specifically, the ceiling must be forecast to be: (1) "at least 1,500 feet above the lowest circling approach [minimum descent altitude]; or (2) [i]f a circling instrument approach is not authorized for the airport, . . . at least 1,500 feet above the lowest published minimum or 2,000 feet above the airport elevation, whichever is higher . . . ." *See* § 135.223(b)(1)-(2). Under either provision, visibility must meet the mimima established in § 135.223(b)(3).

Your first question addresses a scenario in which a pilot is planning an IFR operation for a part 135 operator that does not permit its pilots to use circling approaches. You ask whether the pilot must consider the ceiling requirements of § 135.223(b)(1), or may instead consider only the ceiling requirements of § 135.223(b)(2). Whether the pilot applies the ceiling requirements of § 135.223(b)(1) or § 135.223(b)(2) is contingent upon whether the airport has a part 97 standard instrument approach; it is not contingent upon whether the operator is authorized to conduct circling approaches.

If a circling instrument approach is authorized for the first airport of intended landing, the ceiling requirement of § 135.223(b)(1) applies. However, as stated in § 135.223(b)(2) "[i]f a circling instrument approach is not authorized for the airport," the ceilings listed in that

paragraph apply. Therefore, the regulation would preclude a pilot from using the ceiling specifications of § 135.223(b)(2) if a circling instrument approach is authorized for the first airport of intended landing even if the certificate holder is not permitted to conduct circling approaches.

Next, you ask why the circling approach minima of § 135.223(b)(1) must be considered if the airport of intended landing has a circling approach. Circling approach minima are generally higher than those associated with straight-in, or other approaches, because they permit the pilot to maneuver around the field to line up on an available runway rather than following one predetermined path. Accordingly, they must take into consideration obstacles around the airport, not just those on a fixed approach path and therefore often require ceiling and visibility minimums greater than other approaches.

This response was prepared by Dean 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. Please contact us at (202) 267-3073 if we can be of further assistance.

Sincerely,

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