Federal Aviation Administration

Memorandum

Date: JUL 20 2012

To: Tom Littleton, Supervisory Air Safety Investigator, AVP-100

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

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

Subject: Legal Interpretation – Whether an SIC may substitute an instrument proficiency check for a competency check using § 135.293(c).

This memorandum is in response to your April 18, 2012 request for interpretation of 14 C.F.R. § 135.293. Specifically you ask whether an airman who serves as second-in-command (SIC) in an aircraft can substitute a § 135.297 instrument proficiency check (IPC) for the competency check required by § 135.293.

Section 135.293 requires pilots who conduct part 135 operations to annually pass a competency check. Section 135.297 provides that no person may serve as pilot in command (PIC) of an aircraft under instrument flight rules (IFR) unless the pilot has passed an IPC in the previous six months. Section 135.293(c) provides that the IPC "required by § 135.297 may be substituted for the competency check required by [§ 135.293] for the type of aircraft used in the check." Additionally, if a pilot serves as PIC in more than one type of aircraft, or in both single- and multi-engine aircraft, the pilot may alternate the aircraft in which she takes the IPC and is not required to take more than one IPC every 6 months. *See* § 135.297(e)-(f).

You present the following scenario. A pilot serves as PIC in a Beechcraft Baron, a twin engine piston powered airplane, for a certificate holder authorized to conduct part 135 operations. She also serves as SIC in a Learjet, a multi-engine turbojet aircraft, for the same operator. She is not type rated in the Learjet and thus is not qualified to serve as PIC. This pilot would take an IPC every six months alternating between the Beechcraft and the Learjet relying on § 135.297(e) or (f). This pilot would substitute the IPC for the required annual competency check relying on § 135.293(c).

For the following reasons we find that a pilot who only serves as SIC in a particular aircraft may not substitute an IPC performed in that aircraft for the required § 135.293 annual competency check.

First, § 135.297, titled "Pilot in command: Instrument proficiency check requirements" does not apply to SICs. Paragraph (a) of § 135.297 requires a pilot to have passed an IPC to serve as pilot

in command of an aircraft under IFR in part 135 service. Paragraphs (e) and (f) set out the types of aircraft in which a pilot must take the IPC and reference when a "[PIC] is assigned" to pilot "more than one type of aircraft" and to "both single-engine and multiengine aircraft" respectively. We understand from your request that paragraphs (e) and (f) may have been thought to apply to a situation like yours in which a pilot serves as PIC in one aircraft and SIC in another for a certificate holder and thereby allowing an SIC to substitute a successful § 135.297 IPC for the § 135.293 competency check. However, both paragraph (e) and (f) refer to the IPC "required by paragraph (a) of this section." As stated above, paragraph (a) specifically refers to the requirement to serve as PIC under IFR. Moreover, the procedures and maneuvers required during an IPC are determined by the type of aircraft and operation the "pilot in command" will be performing for the certificate holder. *See* § 135.297(c)(1); *see also* §§ 135.243(a), (c). Therefore, the paragraphs refer to IPCs performed by PICs and not to IPCs performed by SICs.

Next, unlike a PIC, an SIC's qualification to operate an aircraft under IFR in part 135 service is not dependent on compliance with § 135.297. Rather, § 135.245 sets the qualifications for pilots serving as SIC in part 135 operations. It states that a pilot must meet the instrument experience requirements of part 61 to serve as SIC in flight under IFR. Section 61.57(c) sets out the recent instrument flight experience requirements which include, among other things, six instrument approaches within the previous six months. *See* Legal Interpretation to Gerald Naekel, from Donald P. Byrne, Assistant Chief Counsel Regulations and Enforcement Division (June 18, 1991) (noting that although the section title refers to pilots in command, the instrument recency requirements of that section apply to SICs). Assuming hypothetically that an SIC takes a § 135.297 IPC and fails, provided that pilot meets the § 135.245 SIC requirements, that person may still serve as SIC under IFR. Contrast this situation with a PIC who fails the § 135.297 IPC. That pilot would be unable to serve in IFR for the certificate holder until successfully completing an IPC. The absence of a consequence for an SIC failing an IPC implies that the FAA did not contemplate SICs being able to substitute a § 135.297 IPC for the § 135.293 competency check.

In conclusion, a pilot who serves only as SIC in an aircraft cannot substitute a § 135.297 IPC taken in that aircraft for the § 135.293 competency check. To be eligible to operate under IFR in part 135 operations, the pilot in this scenario would have needed to complete the § 135.297 IPC every six months in the Beechcraft in which she served as PIC. That IPC could have been substituted for the § 135.293 competency check. Additionally, she would have needed to complete the § 135.293 competency check annually in the Learjet and meet the § 135.245 requirements to serve as SIC under IFR in the Learjet.

This response was coordinated with the Air Transportation Division of Flight Standards Service. Please contact us at (202) 267-3073 if we can be of additional assistance.