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

SEP 20 2013

Mr. Phillip Kelsey
Director of Operations
Reliant Air Charter, Inc.
Danbury Municipal Airport
1 Wibling Road
Danbury, CT 06810

Dear Mr. Kelsey:

This letter is in response to your January 22, 2013 request for interpretation of the provisions of 14 C.F.R. §§ 135.293 and 135.225. In your letter you ask three questions – two pertaining to the knowledge check required by § 135.293 and one pertaining to instrument flight rules (IFR) approach minimums as set forth in § 135.225.

1. Questions Regarding the Initial and Recurrent Pilot Testing Requirements of 14 C.F.R. § 135.293

Your first question is whether a pilot would need to be tested on the areas listed in § 135.293(a)(1) and (4)-(8) for each aircraft that the pilot will fly for a certificate holder. A pilot is not permitted to conduct part 135 operations unless he or she has passed a test on the subject matter listed in § 135.293(a) in the previous 12 months. Of the subjects tested only items listed in paragraphs (a)(2) and (a)(3) relate to the "type of aircraft" that the pilot will fly. *Administrator v. Darby*, NTSB Order No. EA-5521 (June 2, 2010), 2010 WL 2393714, at *10. The remaining subjects, listed in paragraphs (a)(1) and (a)(4) through (8), relate to general aeronautical knowledge or the appropriate provisions of the certificate holder's operations. *See id.* at *11 (finding the plain language of those paragraphs "does not require a separate oral or written test on those subjects for each aircraft"); *see also* 43 Fed. Reg. 46742, 46774 (Oct. 10, 1978) (stating § 135.293(a) covers generally applicable subjects). Accordingly, a pilot who flies multiple aircraft for a certificate holder in part 135 operations would not need to repeat testing of the subjects in § 135.293(a)(1) and (a)(4)-(8) provided the pilot is tested on the appropriate provisions respective to the operations to be flown. We note that the FAA is currently revising its guidance to reflect this approach.

However, although § 135.293(a)(1) and (4)-(8) are not related specifically to the type of aircraft flown we emphasize that there are elements of the areas checked that will be relevant to the operations to be conducted by a pilot, which may be associated with aircraft operational capabilities. For example, § 135.293(a)(7)(ii) indicates pilots, except rotorcraft pilots, should be tested on procedures for escaping from severe weather situations, including low-altitude windshear. In the case of a pilot who conducts both rotorcraft and airplane operations for a certificate holder, the rotorcraft exception should not be invoked to avoid testing that pilot on

low-altitude windshear escape. Another example is the requirement to test pilots on "new equipment, procedures, or techniques, as appropriate." § 135.293(a)(8). It would be appropriate for a pilot that conducts operations in different aircraft to be tested on new procedures, for example, for each aircraft if relevant. Certificate holders must ensure that pilots have knowledge appropriate for the operations to be conducted.

Next you ask whether the knowledge test would need to be given by a check pilot who is qualified to perform checks in the same aircraft the pilot will be flying in part 135 operations. As discussed above, § 135.293(a)(1) and (a)(4)-(8) are not specific to the type of aircraft a pilot will be flying. Therefore, a check pilot authorized to give knowledge tests for the certificate holder could test pilots on the subjects listed in those paragraphs. However, we caution that in circumstances, like those above, where the questions tested in the otherwise generally applicable subject areas are tied to operations in a particular aircraft type, the check pilot would need to be appropriately knowledgeable to conduct that portion of the knowledge test.

2. Question Regarding the IFR Approach and Landing Minimums of 14 C.F.R. § 135.225)

You ask when a pilot conducting an instrument approach under § 135.225 must initiate a missed approach procedure if the weather goes below minimum conditions after passing the final approach fix. You specify that you are not conducting an "eligible on-demand operation." Based on your letter we interpret your question to ask whether § 135.225(c) and (d) would apply only to eligible on-demand operations. The answer is no.

The plain language of § 135.225 indicates that paragraphs (c) and (d) would only apply to eligible on-demand operations. This is because paragraph (b) creates an exception for eligible on-demand operations, paragraph (c) cross-references (b), and paragraph (d) cross-references (c) creating a chain leading back to the exception for eligible on-demand operations. However, a review of the changes to the section made in consecutive rulemakings in 2003 and 2004 shows that the agency intended for paragraphs (c) and (d) to apply to part 135 operations in addition to eligible on-demand operations. Additionally, the principles of statutory construction support the application of those paragraphs to part 135 operations in addition to eligible on-demand operations.

Prior to the changes made in 2003 and 2004, § 135.225(b) established that the latest weather report must indicate that conditions were at or above the authorized landing minimums for a pilot to begin a final approach segment of an instrument approach. Paragraph (c), addressing weather minimums on the final approach segment, was identical to what is now paragraph (d).

In September 2003 the FAA published a final rule that, in part, established the concept of "eligible on-demand operations" in part 135. *See* Regulation of Fractional Aircraft Ownership Programs and On-Demand Operations, 68 Fed. Reg. 54520 (Sept. 17, 2003). This rule amended § 135.225 to allow eligible on-demand operations to conduct instrument approach procedures to airports without weather reporting facilities. *See* 68 Fed. Reg. at 54521. Structurally, this exception was added as paragraph (b), existing paragraph (b) became paragraph (c), and (c) became (d). 68 Fed. Reg. at 54586 (amendatory instruction 34). Because the paragraphs shifted down a letter the cross reference in new § 135.225(d) was changed from (b) to (c). *Id.*

In January 2004 the FAA again amended § 135.225. *See* Enhanced Flight Vision Systems (EFVS), 69 Fed. Reg. 1620 (Jan. 9, 2004). The FAA intended in that rule to clarify the language pertaining to weather minimums on the final approach segment – the rule text that was shifted from paragraph (c) to paragraph (d) by the September 2003 rule. *See* EFVS NPRM, 68 Fed. Reg. 6802, 6806-09 (Feb. 10, 2003); Area Navigation (RNAV) and Miscellaneous Amendments, 67 Fed. Reg. 77326, 77337 (Dec. 17, 2002) (describing the proposed changes to § 135.225).

However, the agency did not revise the final EFVS rule document to reflect that the paragraph designation had changed as a result of the September 2003 rule. The EFVS rule replaced paragraph (c) instead of the intended paragraph (d) creating two paragraphs in the section on weather minimums *during* the final approach segment and deleting the paragraph establishing what the weather must be to *begin* the final approach segment of an instrument approach. There is no indication from either the EFVS or RNAV rulemaking documents that the FAA intended to introduce a parallel provision regarding weather minimums on the final approach segment to what already existed in the rule. Further, there is no indication the EFVS rule intended to delete the requirements on the weather needed to begin the final approach segment.

Accordingly, we conclude that the current rule language is a result of a drafting error that arose because two final rules were proceeding close in time and the second rule did not account for changes made to § 135.225 by the first rule. The agency did not intend for paragraphs (c) and (d) to apply to instrument approaches initiated using the exception given to eligible on-demand operations in paragraph (b).

Additionally the rules of statutory construction support this conclusion. Reading § 135.225(c) and (d) to apply only to eligible on-demand operations would lead to an unworkable rule. *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1986) ([I]nterpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available."). Paragraphs (c) and (d) of the current rule both apply to aircraft that have begun the final approach segment of an instrument approach procedure. The rule text does not establish which paragraph a pilot would need to comply with when on the final approach segment. Moreover, the two paragraphs are redundant. As discussed before, the EFVS rule only intended to clarify the language on final approach segment weather – the rule did not make major substantive changes.

Finally, you reference a legal interpretation from this office to Larry K. Johnson, dated March 10, 1986, and an NTSB decision, Administrator v. Davey, NTSB Order No. EA-1531 (Dec. 12, 1980), which discuss that flight visibility is controlling when a pilot is operating below decision altitude (DA), decision height (DH), or minimum descent altitude (MDA). We do not agree that these determinations are applicable to the question at hand as neither document addresses instrument approaches conducted under § 135.225. Rather they reference § 91.116, the predecessor to § 91.175. Section 135.225 provides instructions for pilots conducting instrument approaches under § 135.225 through DA/DH or MDA. Pilots would need to comply with § 91.175 when operating below DA/DH or MDA and when landing.

This response was prepared by Dean E. Griffith, an attorney in the International Law, Legislation and Regulations Division of the Office of the Chief Counsel. It was coordinated with the Air

Transportation Division and the Flight Technologies and Procedures Division of Flight Standards Service. Please contact us at (202) 267-3073 if we can be of additional assistance.

Sincerely,

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