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

Office of the Chief Counsel

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

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John Urban
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Elkhart, Indiana 46514

Dear Mr. Urban,

This letter is in response to your request for a legal interpretation regarding 14 CFR 135.225 and the requirements for an eligible on-demand operation to conduct an instrument approach at an airport that does not have a weather reporting facility.

Specifically, you describe a scenario in which a pilot for an eligible on-demand operation files an IFR flight plan to a destination airport with a national weather service (NWS) approved source (AWOS 3 system), and has also "filed an alternate airport with weather reporting..." However, when the "[AWOS 3] weather is received in range of the destination airport, the visibility is reported missing" but since the pilot "filed an alternate airport with weather reporting, [is the pilot] then authorized to conduct an instrument approach to the destination airport?"[1]

In other words, you question whether an airport with an approved weather source (that has the visibility missing from its report at the time of arrival) can be treated as an airport that does not have a weather reporting facility for the purposes of satisfying 14 CFR 135.225(b) so long as the pilot has filed an alternate airport with the appropriate weather reporting.

Background

14 CFR § 135.225 dictates the IFR approach and landing minimums for part 135 operations. 135.225(a) prohibits a pilot conducting a part 135 operation from initiating an instrument approach unless (1) the airport has an appropriate weather reporting facility, and "(2) [t]he latest weather report issued by that weather reporting facility indicates that weather conditions are at or above the authorized minimums for that airport."

135.225(b) states that a pilot conducting an eligible on-demand operation may begin an instrument approach procedure to an airport that does not have an approved weather reporting facility if (1) the alternate airport has an approved weather reporting facility, and

[1] Requester writes of both an AWOS 3 system and an ASOS system. For consistency, we refer to only the AWOS 3 system.

(2) the latest weather report issued by the facility includes a current local altimeter setting for the destination airport, or if not available, the pilot may use the current altimeter setting provided by the facility designated on the approach chart for the destination airport.

Analysis:

The issue remains whether the above scenario you describe satisfies the requirements of either 135.225(a) or 135.225(b).

The requirements of 135.225(a) are not satisfied since 135.225(a)(2) requires that the "latest weather report issued by that weather reporting facility indicates that weather conditions are at or above the authorized IFR landing minimums for that airport." Without the reported visibility from the weather source, the pilot may not determine whether the conditions are at or above the authorized IFR landing minimums and thus may not legally commence an instrument approach under 14 CFR 135.225(a).

Thus, we must turn to the requirements of 135.225(b). Assuming, as you state, that the pilot is conducting an eligible on-demand operation, the pilot may begin an instrument approach procedure to an airport *that does not have a weather reporting facility* so long as the alternate airport has an appropriate weather facility and the pilot receives the appropriate local altimeter setting.

The preamble to the final rule, Regulation of Fractional Aircraft Ownership Programs and On-Demand Operations, 68 Fed. Reg, 54534 (Sept. 17, 2003), explains the intent of 135.225(b). It states that " [t]he final rule provides an alternative means of compliance for eligible part 135 on-demand operators to initiate an instrument approach at a destination airport that does not have weather reporting facilities. The on-demand operator must designate an alternate airport with weather reporting facilities, have a current local altimeter setting for both airports, and meet additional crew qualification and pairing requirements." In the final rule, the FAA disagreed with commenters that questioned the safety of operations into airports without weather reporting facilities, stating that "[t]his final rule provides a safety benefit by requiring weather reporting at the destination airport or requiring that an alternate airport with weather reporting be designated."

Thus, the FAA's original intent of the rule was to allow operators to plan and conduct instrument approaches into airports without weather reporting facilities so long as all the requirements for the IFR operation and alternate airport are met.[2] In your scenario, the destination has a weather reporting facility that is not providing the necessary report at the time of the approach. An airport with a nonfunctioning weather source is functionally equivalent to an airport without a weather source. Therefore, the pilot may treat the airport with the nonfunctioning weather source as an airport that does not have a weather reporting facility for the purposes of satisfying 14 CFR 135.225(b), so long as the pilot is able to abide by the alternate airport requirements of 135.225(b).

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[2] See 14 CFR 135.215, 135.219, & 135.221.

We appreciate your patience and trust that the above responds to your concerns. This response was prepared by Nancy Sanchez, an 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,

Mark W. Bury
Assistant Chief Counsel for
International Law, Legislation, and Regulations
AGC-200