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

APR 10 2015

Douglas Carr
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Washington, DC 20005

Dear Mr. Carr,

The Chief Counsel has requested that I respond to your letter of December 19, 2014, regarding the Federal Aviation Administration's (FAA) interpretation of various operating rules and how they affect your member operators.

On October 28, 2014, my office issued an interpretation regarding the §135.151 requirement to have a cockpit voice recorder (CVR) in certain operations. Since that time we have received significant input regarding the realities of single pilot operations under part 135. Following the discussion at our meeting in early December, my staff and the Flight Standards Service discussed the issues raised by the referenced interpretation. We now more fully understand that many operators choose to use the autopilot in lieu of a second in command (SIC) as their primary means of operating under Part 135. Based on questions my staff has received concerning use of an autopilot and the requirements for a CVR, we are revising our interpretation.

The regulations in question

The cockpit voice recorder requirements in question were adopted in 1988 following several NTSB recommendations and action by Congress. In July 1988, the FAA adopted §135.151(a), which reads as follows:

> (a) No person may operate a multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration of six or more and for which two pilots are required by certification or operating rules unless it is equipped with an approved cockpit voice recorder....

Accordingly, a cockpit voice recorder is required if two pilots are required for the aircraft on its Type Certificate Data Sheet, or if required by an operating rule applicable to a particular operation. One of those operating rules is §135.101, which addresses SIC requirements for operation under instrument flight rules (IFR) and states:

> Except as provided in §135.105, no person may operate an aircraft carrying passengers under IFR unless there is a second in command in the aircraft.

By itself, this operating rule would require the use of a CVR as specified in §135.151 for aircraft having a passenger seating configuration of six or more. However, §135.105(a) provides the following exception to the requirements for an SIC under IFR:

> Except as provided in §§135.99 and 135.111, unless two pilots are required by this chapter for operations under VFR, a person may operate an aircraft without a second in command, if it is equipped with an operative approved autopilot system and the use of that system is authorized by appropriate operations specifications.

Historical treatment by AGC-200

The preambles for these various rules do not reflect any consideration of the interplay of equipage and these particular operating rules when §135.151 was adopted, nor when any of the three regulations have been amended since 1988. The rules are most often applied by Flight Standards personnel in the field. On the few occasions AGC-200 was consulted, our verbal opinion had been that operation under § 135.101 required the use of a CVR because two pilots were required by an operating rule. A review of our interpretation databases did not indicate that any written interpretation of these rules had been requested before 2012.

In 2012, AGC-200 received a request for an interpretation from the Technical Support Branch in the Central Region regarding the SIC rules applicable to the Cessna 525. In responding to the interpretation request, we clarified the training requirements for SIC, which was the central issue raised by the request. The interpretation also noted that the CVR rules had nothing to do with the weight of the aircraft, and concluded that the Cessna 525 was required to have a CVR based on its seating configuration and the TCDS requirement for two pilots. As you are aware, the Cessna 525 has a unique TCDS. It calls out the airplane as requiring either two pilots or one pilot and a specified autopilot system. AGC considered this and determined that the requirement for a cockpit voice recorder should not be based on the least common denominator for a sophisticated aircraft. (Memorandum to Jack Swenson from Rebecca MacPherson, February 29, 2012).

In 2014, AGC-200 received a request for interpretation regarding the applicability of §135.151 to a requestor's Beech 200 operated under part 135. We concluded that "the ability to operate under the exception in §135.105 using an autopilot system instead of a second pilot does not negate the need for a cockpit voice recorder." We also cited to the Swenson memorandum statement that "[N]othing about the use of a single pilot plus autopilot may be read to change the requirements in §135.151" to require a CVR. (Letter to Bill Landis from Mark Bury, dated October 28, 2014)

Revision of interpretation of §135.105(a)

Subsequent to the issuance of the Landis interpretation, AGC has become aware that many operators do not have SIC programs authorized, and instead rely strictly on autopilot systems to operate in IFR conditions with one pilot. The underlying premise for such operations is that a CVR is not required, a circumstance that has been accepted by the FAA in many cases. However, we also learned that FAA field personnel have not been consistent

in providing guidance to operators on whether a CVR was required for such operations. As a result, we understand that the Landis interpretation potentially will have a significant operational impact on single-pilot operations using an autopilot system.

In light of these circumstances, we now determine it is reasonable to read §135.105(a) as an operating rule that provides relief from the two-pilot requirement of 135.101, and find that a CVR is not required for operations under §135.105 when the required autopilot is used to comply and the certificate holder possesses the appropriate operations specifications in order to conduct single pilot operations under §135.105.

However, when the required autopilot is not functional, the aircraft is restricted to either VFR operation with a single pilot, or to operation with two pilots under a valid SIC program with a CVR installed on the aircraft and used during the operation.[1] In those cases where an autopilot is not functional for any reason, operations using an SIC may only be conducted if the operator has a fully approved SIC program and the aircraft is equipped with the CVR required by §135.151. If no CVR is installed on an aircraft configured for six or more passengers, an operator may not conduct two pilot operations with that aircraft.

We continue to hold the position that a two-pilot requirement in a TCDS requires the use of a CVR under §135.151, and that the relief provided by an operating rule such as §135.105 extends only to the requirement of §135.101, not to any certification rules or provisions in a TCDS.

We appreciate your time in assisting us in re-evaluating the circumstances of day to day operations by many carriers. If you have further questions, please feel free to contact my staff.

Sincerely,

Mark W. Bury
Assistant Chief Counsel for Regulations

[1] At no time may a Minimum Equipment List (MEL) procedure (or other relief) for a nonfunctioning autopilot be used to allow single pilot IFR operation; the regulation itself precludes any such relief by calling out an "operative approved autopilot system."