U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

JUL 15 2016

Rodney Beeler
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Dear Mr. Beeler:

This letter provides a response to your request for clarification concerning the use of the term "served" throughout 14 C.F.R. part 135, as well as "how 135.247(a)(ii)(C) works." You ask whether a pilot *serves* as pilot in command if he or she is rated as a pilot in command on an airplane that requires two pilots, yet is assigned to take the role of second in command under 14 C.F.R. § 135.109. You cite 14 C.F.R. § 135.225(e), which provides visibility landing minimums applicable to "each pilot in command of a turbine-powered airplane who has not served at least 100 hours as pilot in command in that type of airplane." Further, you ask how the FAA defines 15 hours in the last 90 days for purposes of § 135.247(a).

"Serving" as Pilot in Command

Under the plain language of § 135.225, *service* as a pilot in command entails both one's designation as pilot in command under § 135.109, as well as actually fulfilling the duties of a pilot in command, rather than manipulating controls while actually serving as second in command. See Letter to Donald W. Steinman from John H. Cassady, Assistant Chief Counsel (December 5, 1984). In this regard, time spent in the role of second in command cannot satisfy the 100-hour requirement of § 135.225(e). Id.

As you know, § 135.225(e) sets forth high-minimum pilot in command requirements for part 135 operations of turbine-powered airplanes, such as turbojet or turbopropeller. As stated in FAA Order 8900.1, Volume 4, Chapter 2, these rules require those pilots in command who do not meet the high-minimum experience requirements of 100 hours' service as pilot-in-command on the particular aircraft to increase the published minimum descent altitude/decision altitude/decision height and the published visibility. Such an increase is designed to ensure safety, given that less experienced pilots in command will benefit from an increased buffer when operating turbine-powered airplanes. The plain language of § 135.225 does not permit a reduction in the 100-hour flight experience requirement; accordingly, the FAA has denied requests for exemption of the requirement.

You ask if a pilot is type rated as a pilot in command but assigned as a second in command on an airplane that requires two pilots, whether that pilot is serving as pilot in command. Consistent with the above analysis concerning § 135.225, the pilot can be considered as pilot in command only when his or her actions unambiguously establish that he or she is fulfilling the duties of the role. In this regard, the designation under § 135.109 certainly provides indicia of the pilot crewmembers' roles.

Pilot Qualifications: Recent Experience

Section 135.247(a)(ii)(C) prohibits any person from serving as pilot in command of an aircraft carrying passengers unless, within the preceding 90 days, that person has fulfilled certain requirements, such as holding at least a commercial pilot certificate with the appropriate category, class, and type rating for each airplane that is type certificated for more than one pilot crewmember that the pilot seeks to operate, and accomplishing and logging at least 15 hours of flight time in the type of airplane the pilot seeks to operate. You ask whether completion of a § 135.293 check obviates the need for 15 hours of flight time in the airplane to serve as pilot in command. You opine that the pilot would be qualified under §§ 135.297 and 135.299 requirements, yet they would not fulfill the requirements for recent experience under § 135.247(a)(ii)(C). You base this presumption on the premise that, in the absence of having completed the requirements of 14 C.F.R. §§ 135.293, 135.297, and 135.299, a pilot cannot serve as pilot in command because he or she is not fully qualified to do so.

First, please note the plain text of 14 C.F.R. § 135.293 sets forth initial and recurrent pilot testing requirements, and merely refers to a certificate holder's use of a "pilot." The section does not discuss specific requirements or experiences applicable to *pilots in command.* Sections 135.297 and 135.299 set forth instrument proficiency check and line check requirements, respectively, applicable to pilots who seek to assume the role of a pilot in command in operations under part 135. Neither of these sections, however, requires 15 hours of flight time in the preceding 90 days in the type of turbine-powered airplane—type certificated for more than one pilot crewmember—that the pilot seeks to operate. Sections 135.297 and 135.299, therefore, form the foundational testing requirements, while § 135.247(a) sets forth additional experience requirements for up-to-date operations specific to an operation described at § 135.247(a)(ii)(C).

Moreover, some regulations within part 135 exclude § 135.247 from applicability, in certain circumstances. For example, § 135.269(b)(7) prohibits a certificate holder from assigning any pilot to an augmented crew of three pilots unless the crew contains at least a pilot in command who meets the requirements of part 135, subpart E ("Flight Crewmember Requirements"), and a second pilot in command who meets the same requirements except those in §§ 135.244 and 135.247. Letter to Michael Origel from Mark W. Bury, Assistant Chief Counsel for International Law and Regulations (Sept. 4, 2015). Such a distinction not only confirms that § 135.247(a) is discrete from the testing requirements of §§ 135.297 and 135.299, but it also verifies that pilots acting as pilots in command must fulfill requirements above and beyond those required of pilots acting as

second in command. Overall, the designations required in § 135.109 must be unambiguous, and the pilots functioning as pilots in command must fulfill all applicable requirements.

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This letter has been prepared by Katie Inman, Operations Law Branch, Office of the Chief Counsel and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,

Lorelei Peter
Assistant Chief Counsel for Regulations, AGC-200

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April 11, 2016

To whom it may concern

I am writing this letter to request clarification of the word "served" as it is used throughout FAR 135. I am also requesting clarification of FAR 135.247 (a)(ii).

The first clarification of the word "served" is due to different interpretations as to how it is used. In FAR 135.225 (e) *The MDA or DA/DH and visibility landing minimums prescribed in part 97 of this chapter or in the operator's operations specifications are increased by 100 feet and ½ mile respectively, but not to exceed the ceiling and visibility minimums for that airport when used as an alternate airport, for each pilot in command of a turbine-powered airplane who has not served at least 100 hours as pilot in command in that type of airplane.*

The next instance that the word "served" is used is in FAR 135.247 *(a) No certificate holder may use any person, nor may any person serve, as pilot in command of an aircraft carrying passengers unless, within the preceding 90 days, that person has—*

The question is that if a pilot is typed rated as a pilot in command, on an airplane that requires two pilots is assigned as a second in command under FAR 135.109, is that pilot serving as pilot in command?

There have been discussions that because the assigned second in command is sole manipulator of the controls this allows him to "serve" as pilot in command during that leg, and can be counted towards the 100 hours of serving as pilot in command needed in order to not have to add ½ mile visibility and 100 feet to the decision height/altitude.

An example of this is that a pilot has had all the training needed to complete training under FAR 135.293 and FAR 135.297, and has no previous experience in this type of airplane, but the company elects not to give the pilot in command an FAR 135.299 for personnel reasons. Six months later the company decides to give that pilot an FAR 135.299 line check, and start assigning that pilot as pilot in command under FAR 135.109.

Even though that pilot may have been accruing 100 hours of pilot in command flight time due to being sole manipulator of the controls, the pilot has never been assigned to serve as pilot in command under

FAR 135.109, it is my interpretation that the pilot will have to accrue 100 hours of serving as pilot in command by being assigned pilot in command under FAR 135.109.

When looking under FAR 61.57 I have found similar wording except the word "served" is replaced by "act". With that, it is my interpretation that, even if the second in command that is assigned for a flight under FAR 135.109 is type rated as pilot in command of that type of airplane; he will not serve as pilot in command at any time during the flight. Without completing requirements under FAR 135.293, FAR 135.297, and FAR 135.299 it is of my interpretation that a pilot cannot serve as pilot in command as they are not fully qualified to serve as pilot in command.

The next clarification that I need is to understand how FAR 135.247 (a)(ii)(C) works, and here is an example:

A pilot is type rated on two different airplanes that require type ratings and require more than one crew member to fly. The pilot serves as pilot in command on a turbojet airplane #1 on a regular basis and has no problem with maintaining the recent experience required under FAR 135.247 to serve as pilot in command. On turbojet airplane #2 the same pilot serves as pilot in command on the airplane only when needed but will go once a year for FAR 135.293 training and will alternate between the different airplanes every six months completing FAR 135.297 training.

It says in FAR 135.247 (a)(ii)(C) *Within the preceding 90 days prior to the operation of that airplane that is type certificated for more than one pilot crewmember, the pilot must have accomplished and logged at least 15 hours of flight time in the type of airplane that the pilot seeks to operate under this alternative*:

Under the example that I have described when doing training in the simulators it may be only 8 hours, at the most, that is being logged. For this pilot, over the course of 90 days, they do not have at least 15 hours of flight time in that type of airplane. So to make my example clear this pilot in turbojet #2 does not have 15 hours of flight time in the previous 90 days prior to being assigned to serve as pilot in command on that airplane.

The argument that is being made is that if you complete an FAR 135.293 check, then it negates the need for 15 hours of flight time needed in the airplane to serve as pilot in command. This would be the same argument when completing an FAR 135.297 check or FAR 135.299 check. The argument is that it makes the pilot current and qualified to serve as pilot in command. I do not interpret it that way as the pilot would be qualified under those checks, but not be able to serve as pilot in command because they do not meet the requirements for recent experience under FAR 135.247 (a)(ii)(C).

In conclusion I would like to know the definition of "serve" as it is used throughout FAR 135 and I would like to know how 15 hours in the last 90 days is defined to be needed to serve as pilot in command on a turbojet airplane requiring more than one pilot crewmember. I hope that I have explained my examples well enough to clarify my questions.

If you need any clarifications please contact me at the contact information above. Thank you for your time and assistance with this matter.

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