U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

JAN 18 2018

Mr. Barry Lambert Harris
[redacted]

Re: Request for Legal Interpretation of 14 CFR § 135.293(c)

Dear Mr. Harris:

This letter responds to your May 5, 2017, request for an interpretation of 14 CFR § 135.293(c), on behalf of your client, McMahon Helicopter Services, Inc. (McMahon). You seek clarification on the East Michigan Flight Standards District Office's (FSDO) position that McMahon company pilots fly an instrument approach during a competency check. You maintain that the FSDO's reliance on FAA Order 8900.1's requirement to fly an instrument approach during a competency check contradicts § 135.293(c), and furthermore, FAA Order 8900.1 contains language permitting a POI to ignore this requirement.

Mr. McMahon met with the FSDO on May 1, 2017, to discuss § 135.293(c) requirements to perform an instrument approach during a competency check. On May 4, 2017, the FSDO wrote to McMahon, referencing the NPRM (Docket No. FAA-2010-0982), § 135.293, and FAA Order 8900.1. The FSDO indicated that if the pilot was unable to conduct an instrument landing system approach or a global positioning system approach, the pilot should perform another instrument approach, as appropriate to the rotorcraft's installed equipment. It went on to state that the intent of the instrument check is to demonstrate the pilot's ability to maneuver the rotorcraft solely referencing the instruments, and that the methods for checking the pilot's ability are varied depending on the circumstances, and left to the principal operating instructor's (POI) discretion.

You attached your client's draft response to the FSDO's correspondence. Your client indicates that the FSDO misunderstood its position, which is simply that 14 CFR § 135.293(c) does not require an instrument *approach*, and that maneuvering the rotorcraft into visual meteorological conditions (VMC) can be demonstrated without performing an approach.

Section 135.293 establishes the competency check requirements for pilots conducting part 135 operations. Section 135.293(c) requires that the competency check given in a rotorcraft include "a demonstration of the pilot's ability to maneuver the rotorcraft solely by reference to instruments." However, it provides that "[f]or competency checks in non-IFR-certified rotorcraft, the pilot must perform such maneuvers as are appropriate to the rotorcraft's installed equipment, the certificate holder's operations specifications, and the operating environment."

As you correctly state, § 135.293(c) does not specifically require an instrument approach during an instrument check. Rather, it provides broad language indicating that the check must test the pilot's ability to safely maneuver into VMC following an inadvertent encounter with instrument meteorological conditions. For pilots in non-IFR-certified rotorcraft, the regulation remains purposefully open by providing that the pilot must perform "such maneuvers as are appropriate" to the installed equipment, operations specifications, and operating environment. This means that even pilots without an instrument rating, onboard a non-IFR-certified rotorcraft, may be tested using the rotorcraft's instrument equipment, if appropriate.

Guidance regarding competency check procedures is found in FAA Order 8900.1, Volume 3, Chapter 19, Section 2, Table 3-71, Note (c)(4). The guidance gives the POIs discretion to "approve methods appropriate to the aircraft, equipment installed, facilities available, operations specifications (OpSpec) requirements, and the environment in which the operations may occur." It instructs that the check must include "at least one instrument (if aircraft is so equipped) approach appropriate to the circumstances."

As a general principle, guidance material such as FAA Order 8900.1 does not have the force and effect of a regulation on an operator; to the extent that the material in FAA Order 8900.1 conflicts with a binding regulation, the regulation takes precedence.[1]

We do not read the guidance as contradicting § 135.293(c). The regulatory text gives broad latitude for the instrument check to include "such maneuvers as are appropriate to the rotorcraft's installed equipment,"[2] for the purpose of "determining the pilot's competence in practical skills and techniques."[3] Including an instrument approach in the instrument competency check, if the rotorcraft is so equipped, is consistent with the regulation's requirements and purpose. Furthermore, the NPRM stated that "The proposal would require that the demonstration be scenario-based and include attitude instrument flying, recovery from unusual attitudes, navigation, ATC communications, and *at least*

---

[1] Letter to Joseph Cimperman from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations, AGC-200 (May 6, 2011).
[2] § 135.293(c).
[3] § 135.293(b).

one instrument approach."[4] The POI's determination to include an instrument approach during the instrument competency check is based on the rotorcraft's instrument equipment. Therefore, if a rotorcraft is so equipped, an instrument approach may be included in the instrument check.[5]

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 Sarah Yousaf, 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

---

[4] Notice of Proposed Rulemaking (NPRM), *Air Ambulance and Commercial Helicopter Operations, part 91 Helicopter Operations, and part 135 Aircraft Operations; Safety Initiatives and Miscellaneous Amendments*, RIN 2120-AJ53, Notice No. 10-13, Docket No. FAA-2010-0982, at 73 (emphasis added).

[5] While your client suggests that maneuvering the rotorcraft into VMC can be demonstrated without performing an instrument approach, the extent of the competency check is determined by the Administrator through the authorized POI. § 135.293(b).

Barry Lambert Harris

[redacted]

5 May 2017

Pat McNall
Acting Chief Counsel
Federal Aviation Administration
800 Independence Ave. SW
Washington, DC 20591

Dear Pat:

It was great catching up with you again. I'm really sorry we didn't connect at Peggy's retirement dinner. As I mentioned in our conversation, I represent McMahon Helicopter Services, Canton, MI.

A problem has arisen for the company in so far as the East Michigan FSDO is insisting that the company's VFR operations which are conducted under Part 135 are subject to the provisions of policy guidance 8900.1, Vol. 3, Chap 19, Sec 7 that requires pilots to fly an *instrument approach* during a check ride. While this guidance does contain a tabular listing of requirements there is also language that would permit a POI to ignore this apparent requisite.

This guidance is in direct contradiction of 14CFR 135.293(c) and therefore should not take precedence and this is made clear in language within the guidance itself.

I am enclosing the latest correspondence between McMahon and the FAA to give you a flavor of the debate. I'm sure you are as familiar as I am with the organizational tendency to engage in what I call "requirement creep." I see it frequently in certification programs and I think I am seeing it here in policy guidance that the field is inclined to accept as a black letter mandate.

I would appreciate it if your office could review this guidance and the regulation to determine whether we are correct in our interpretation.

In the meantime I hope you can suggest a methodology by which the Flight Standards Service can be prevented from enforcing its erroneous interpretation or engaging in any enforcement action during the pendency of your review.

I look forward to hearing from you.

Best regards,

Barry

From: **Nick McMahon** [redacted]
Subject: Emailing - FAA_CSI_135-293_Part_Deux.pdf
Date: May 4, 2017 at 4:14 PM
To: Barry L. Harris [redacted]

Barry,

Rick Anderson replied this afternoon with a letter and additional convoluted information from AFS-280 that's totally irrelevant. Attached is my draft response letter. Please advise on next steps. I assume we shall continue the CSI process?

Thank you,

McMAHON

Richard Anderson
FAA – SE Michigan FSDO
8800 Beck Rd.
Ypsilanti, MI 48111

May 4, 2017

Dear Mr. Anderson:

Thank you for the meeting and the response letter. Unfortunately, your letter has not resolved my issue and has incorrectly identified my position in the matter.

My position is very simply: **14 CFR 135.293(c) does *not* require an instrument "approach".**

The law states:

"Each competency check given in a rotorcraft must include a demonstration of the pilot's ability to maneuver the rotorcraft solely by reference to instruments. The check must determine the pilot's ability to safely maneuver the rotorcraft into visual meteorological conditions following an inadvertent encounter with instrument meteorological conditions. For competency checks in non-IFR-certified rotorcraft, the pilot must perform such maneuvers as are appropriate to the rotorcraft's installed equipment, the certificate holder's operations specifications, and the operating environment."

There's no mention of the word "approach" in the language above. Maneuvering the rotorcraft into visual meteorological conditions can be demonstrated without performing an approach. We've demonstrated this on every FAA check since the law was in place.

I recognize that the FAA guidance has changed, but the law did not. As we discussed, the guidance is not the law. We will continue the CSI process until we receive a response from the FAA that addresses the conflicting guidance. The basis for the guidance is irrelevant.

Thank you,

Nick McMahon
President

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

East Michigan Flight Standards District Office

Willow Run Airport – East Side
8800 Beck Road
Belleville, Michigan 48111

Ph: (734) 487-7222
Fax: (734) 487-7221

May 4, 2017

McMahon Helicopter Services, Inc.
Mr. Nick McMahon, President
8351 Ronda Drive
Canton, MI 48187

Dear Mr. McMahon:

At the May 1, 2017 meeting between yourself, Mr. Barry L. Harris (via phone), FAA Front Line Manager James Gotha and myself, we discussed the issue of requiring company pilots of McMahon Helicopter Services, Inc. part 135 certificate (BUBA), without an instrument rating perform an instrument approach during the 14 CFR 135, §135.293(c) competency checks.

As a result of the meeting, a memo was sent to the Great Lakes Region, GA Technical Support Branch, AGL-230 on May 1, 2017 asking for clarification on the following:

"McMahon's position is that there is a disagreement between the requirements of §135.293 and FAA Order 8900.1, Volume 3, Chapter 19, Section 7, Table 3-71, to have a part 135 helicopter certificate holder perform an instrument approach on a competency check when some of their pilots do not have instrument ratings."

On May 3, 2017, AGL-230 forwarded the issue to AFS-280, Air Carrier Training Systems and Voluntary Safety Programs Branch for review and later that day we received the following response:

The key elements to your question as you stated are found in the NPRM *(RIN 2120-AJ53, Docket No. FAA-2010-0982; Notice No. 10-13 enclosed, see highlighted text and pages 72 & 73)*, in the current rule and detailed in the 8900 guidance. In the NPRM, the FAA explained that the proposal for checking on recovery from IIMC in §135.293(c) would require that the demonstration be scenario-based and include attitude instrument flying, recovery from unusual attitudes, navigation, air traffic control (ATC) communications, and at least one instrument approach. The FAA further explained that if the aircraft is appropriately equipped and the check is conducted at a location where an instrument landing system (ILS) is operational, the pilot should demonstrate an ILS approach. If the pilot is unable to conduct an ILS approach, the pilot should demonstrate a global positioning system (GPS) approach if the aircraft is equipped and the pilot is properly trained. If neither an ILS nor GPS approach can be performed, the pilot should perform another instrument approach.

Specifically, §135.293(c) states each competency check given in a rotorcraft must include a demonstration of the pilot's ability to maneuver the rotorcraft solely by reference to instruments. The check must determine the pilot's ability to safely maneuver the rotorcraft into visual meteorological conditions following an inadvertent encounter with instrument meteorological conditions. For competency checks in non-IFR-certified rotorcraft, the pilot must perform such maneuvers as are appropriate to the rotorcraft's installed equipment, the certificate holder's operations specifications, and the operating environment.

The 8900.1, Vol. 3, Ch. 19, Sec. 7, Table 3-71 note 4 goes on to say: The event should reflect a realistic course of action the pilot might take to escape from an encounter with inadvertent instrument meteorological conditions (IIMC). POIs should approve methods appropriate to the aircraft, equipment installed, facilities available, operations specifications (OpSpec) requirements, and the environment in which the operations may occur. If a part 135 helicopter OpSpec limits operator to day visual flight rules (VFR) only, and the operator's helicopter(s) are not equipped with attitude reference instrumentation, this requirement may not be applicable. Training and checking must provide emphasis on avoidance of IIMC, including the discipline and decision-making required to divert, make a precautionary landing, or make an emergency transition to instrument flight rules (IFR), as appropriate to the circumstances. This event must include attitude instrument flying, recovery from unusual attitudes, navigation, air traffic control (ATC) communications, and, at least one instrument (if aircraft is so equipped) approach appropriate to circumstances.

In summary, the intent is the demonstration of a pilot's ability to maneuver the rotorcraft solely by reference to instruments and recovery to VMC conditions. Base on the aircraft equipage the method to accomplish the task are variable based on the verbiage found in the preamble. Additionally the task, in whole, is not at the discretion of the check pilot, as it is identified as a separate task in §135.293(c) and must always be completed, and is not limited by the statement referencing tasks associated with the original issuance of the particular pilot certificate required for the operation, for the same reason.

If you feel that McMahon Helicopter should not be held to the safety standard of §135.293(c), you may apply for an exemption to the rule using the process in 14 CFR 11.

Sincerely,

RICHARD D. ANDERSON JR

Digitally signed by RICHARD D. ANDERSON JR
Date: 2017.05.04 13:36:54 -04'00'

Richard D. Anderson Jr.
Front Line Manager