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

Office of the Chief Counsel

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

August 21, 2023

Jon Eichler
Grant Aviation, Inc.
6420 Kulis Drive
Anchorage, AK 99502

Dear Mr. Eichler:

We have received your letter of July 5, 2022, requesting an interpretation of Section 135.113 of Title 14 of the Code of Federal Regulations.[1] Specifically, you asked if a company check airman may occupy the tenth seat of a Cessna Caravan aircraft when the remaining nine passenger seats are occupied, and the check airman is not conducting an en route check. We have determined that your question is appropriate for legal interpretation because it is a novel question.

A legal interpretation issued in 2015 (Bernier-Winner) may have led to a misunderstanding as to whether select trained and qualified individuals identified in 14 CFR 135.113 are required to be on duty to occupy the second pilot seat in aircraft with more than eight seats, excluding pilot seats. The Bernier-Winner interpretation stated that "[i]f the person in the second pilot seat is not assigned any duties, and the aircraft has no more than 8 passenger seats (excluding any pilot seat), then that person does not need to be an assigned and qualified [second-in-command] SIC (see § 135.113)."[2] The mention of "assignment" in that part of the interpretation appears to indicate that the person in the second pilot seat needs to be assigned to the flight and engaged in their duties in order to be seated in the second pilot seat when the aircraft has more than 8 passenger seats. As a result, guidance was issued by the FAA citing the Bernier-Winner interpretation stating that SICs who are not assigned any duties are "passengers" and only allowed to sit in the pilot seat when an aircraft had no more than eight seats.[3] This guidance also notes that person may only sit in a pilot seat if that person is a fully trained and qualified PIC, SIC, check pilot, or FAA, NTSB, or USPS representative.

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[1] 14 CFR 135.113 states: "No certificate holder may operate an aircraft type certificated after October 15, 1971, that has a passenger seating configuration, excluding any pilot seat, of more than eight seats if any person other than the pilot in command, a second in command, a company check airman, or an authorized representative of the Administrator, the National Transportation Safety Board, or the United States Postal Service occupies a pilot seat."
[2] Legal Interpretation from Lorelei Peter to Donald Bernier, November 2, 2015.
[3] 8900.1., Vol.3., Ch.19, Sec.7. (October 19, 2020).

However, the plain language of 14 CFR 135.113 does not require that the pilot in command, second in command, company check airman, or authorized representative of the Administrator, the National Transportation Safety Board, or the United States Postal Service occupying the other pilot seat be engaged in their respective duties during the flight.

14 CFR 135.113, formerly designated as 14 CFR 135.53, based the prohibition on unqualified passengers occupying a pilot seat on the potential of a passenger intentionally or inadvertently interfering with the pilot.[4]

Although evidence at the time did not reflect that this was a problem, the FAA was concerned that there could be a risk of interference with future, more sophisticated control systems that could not be predicted at the time.[5] The risk of future passenger interference outweighed any benefit of allowing a passenger to sit in that second pilot seat when more than eight passengers were present. The preamble remained silent as to whether that qualified passenger had to be "on duty." These specified occupants would be fully qualified and trained to sit in the second pilot seat and be familiar with control systems.

In support of this interpretation, the preamble to that rule notes that "§ 135.53 applies only to an 11-seat configuration (including the pilot seats); aircraft with fewer seats have always been permitted to carry passengers in the pilot seat and have done so safely."[6] Aircraft with more than 11 seats require two pilots "thus making the pilot seat unavailable to passengers."[7] If this regulation was designed to prevent all forms of "passengers" from occupying the second pilot seat, there would not have been a need for the preamble to note that once the aircraft had more than 11 seats, passenger occupancy of the second pilot seat is operationally impossible.

Accordingly, a qualified SIC, check airman, or other FAA, NTSB, or USPS representative is permitted to sit in the second pilot seat when there are more than eight passengers present without the need for them to be actively engaged in their respective duties.

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 response was prepared by Megan Culligan, Attorney-Adviser in the Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation and Regulatory Support Divisions of the Office of Safety Standards in the Flight Standards Service.

Sincerely,

LAURA JANE MEGAN-POSCH

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Date: 2023.08.22 12:03:02 -04'00'

Laura Megan-Posch
Assistant Chief Counsel for Regulations

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[4] 36 FR 20019, 20036 (October 15, 1971).
[5] *Id.*
[6] *Id.*
[7] *Id.*