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Federal Aviation Administration

**Pilot-in-Command Qualifications and
Instrument Proficiency Check
Requirements**

FS-78-119a-R

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DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 135****[Docket No. 21129; Amdt. No. 135-15]****Pilot-in-Command Qualifications and Instrument Proficiency Check Requirements****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: Part 135, effective December 1, 1978, required all pilots in command to hold instrument ratings. It also required pilots to satisfactorily demonstrate instrument approach procedures using certain navigational facilities. These requirements are unduly restrictive for some certificate holders. This amendment provides that pilots are not required to hold instrument ratings when operating in day, visual flight rule conditions in certain isolated areas when conducting air taxi or commercial operations. It also provides that only those instrument procedures which the certificate holder desires to be used are required to be demonstrated. This amendment reduces burdens on certain air taxi and commercial operators and is therefore consistent with Executive Order 12291 and the Regulatory Flexibility Act.

EFFECTIVE DATE: June 11, 1981.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn M. Sidwell, Regulatory Projects Branch (AVS-24), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:**Background****§ 135.243 Pilot-in-Command Qualifications.**

An amendment was adopted on September 26, 1978, which revised the requirements for operations by persons holding Air Taxi/Commercial Operators Certificates and required all pilots in command to hold instrument ratings. Section 135.10(c) originally required compliance with this requirement by June 1, 1979.

Following publication of the revised Part 135, the FAA received numerous petitions for exemption from the instrument rating requirement. In addition, several inquiries were received from members of Congress who were seeking information for constituents

who wanted relief from the instrument rating requirement. The majority of these requests for relief were from certificate holders who conduct on-demand charter operations in remote areas which are located in the northern United States. Almost all of the requests were from seaplane operators conducting day VFR operations that carry hunting or fishing groups to isolated locations or provide cargo service to small, isolated settlements which lack access to other commercial transportation means. In virtually all instances, these operators serve areas that are so remote there are no navigation facilities suitable for use. Because of the absence of these facilities and the day VFR nature of the operations, their aircraft are not equipped for instrument flight operations. Consequently, they use pilots who do not hold instrument ratings. However, these pilots are highly experienced and are thoroughly familiar with the terrain, alternate landing areas, and weather patterns in the area of operations.

In response to the situation, Amendment No. 135-1, effective May 7, 1979, (44 FR 26737) extended the compliance date of the instrument rating requirement until December 1, 1980. This action was taken to provide time for the FAA to restudy this requirement and possibly adopt changes regarding its scope.

Notice 80-23 (45 FR 80450), Miscellaneous Amendments, was issued on November 28, 1980. This notice proposed changes to numerous sections of the FAR. Most of the proposals were clarifying, editorial, or corrective in nature. However, one proposal involved changing the Part 135 pilot-in-command requirements to allow pilots to conduct flights during the day under VFR in certain isolated areas without holding an instrument rating. The closing date for comments was February 4, 1981.

Amendment No. 135-9 (45 FR 80460), effective December 1, 1980, further extended the compliance date for the instrument rating requirement to February 1, 1981, to allow the agency adequate time to consider alternatives and determine a course of action.

§ 135.297 Pilot in Command: Instrument Proficiency Check Requirement.

When Part 135 was revised, the pilot-in-command instrument proficiency check requirements were modified. Under that revision, § 135.297 requires each pilot in command to demonstrate satisfactorily at least one instrument approach procedure using an instrument landing system (ILS), a very high

frequency omnirange station (VOR), and a nondirectional radio beacon (NDB). Some air taxi certificate holders contend that the revised requirement is too restrictive. For example, some certificate holders state they have no need to use ILS facilities and that the nearest ILS facility is located a significant distance from the certificate holder's operations base. It is argued that the present rule requires unreasonable expenditures of aircraft and pilot operational expense to demonstrate proficiency on a facility which is not used by some certificate holders.

Notice 80-23 proposed that only those instrument approach procedures which the certificate holder desires to use are required to be demonstrated.

Discussion of Comments**§ 135.243 Pilot-In-Command Qualification.**

The FAA has reviewed the necessity for an instrument rating in light of comments received from Notice 80-23. It has concluded that it is appropriate to amend the present regulation to allow certain pilots in command operating under Part 135 to operate under day, visual flight rule conditions into isolated areas or settlements without having an instrument rating. A new paragraph (d) is added to § 135.243 to implement this amendment.

Notice 80-23 stated that § 135.243(b)(3), which requires an instrument rating, would not apply to nonstop flights between the certificate holder's main base and seaplane landing area or the return flight, subject to specific limitations. After considering comments which indicate that the proposal is too restrictive, the rule is amended to apply to single reciprocating-engine-powered airplanes, including seaplanes, skiplanes, and landplanes. In addition, the FAA has determined that the nonstop flight requirement is unnecessary and is deleted.

Section 135.243(d)(2) prohibits certain scheduled operators and mail carriers, such as commuter air carriers, from using pilots in command without instrument ratings. No comments were received on this proposal and it is adopted as proposed.

Notice 80-23 proposed that it would not be necessary for a pilot in command in a Part 135 operation flying under day VFR conditions to have an instrument rating when there is no VOR or NDB facility within 40 nautical miles of the certificate holder's main base, the destination, or straight-line course between the main base and destination. In response to the notice, one

commenter states that aircraft that are used in day, VFR operations are not required to be radio equipped, making such a proposal useless. Another commenter took issue with the 40-nautical-mile stipulation stating that although a facility may be within the 40-nautical-mile range, it does not necessarily mean that it can be useful on trips to these isolated areas or settlements.

Three other commenters object to this requirement since they could operate in these areas within 40 nautical miles of the facilities and still not receive a reliable signal due to the nature of the terrain. These commenters feel that climbing to any altitude to get a reliable signal would be time consuming and, at today's cost, would result in substantial loss of business. These flights would be especially impacted since they are of such short duration. The FAA reevaluated this aspect of the proposal and concludes that the requirement concerning the VOR and NDB facility is too restrictive and the rule is amended by deleting this requirement. It was proposed as a means of expressing in objective terms the concept that isolated areas ordinarily do not have radio navigational aids.

The FAA has decided that the certificate-holding Flight Standards district office should determine whether the area to be served is an isolated area since it is familiar with areas within its jurisdiction. Accordingly, § 135.243(d)(3) is added which states that the area, as specified in the certificate holder's operations specifications, is an isolated area as determined by the certificate-holding Flight Standards district office if it is shown that the primary means of navigation in the area is by pilotage, since radio navigational aids are largely ineffective, and the primary means of transportation in the area is by air. Before approving the area as an isolated area, the Flight Standards district office ascertains that the entire operation, that is, takeoff, en route travel, and landing, will be conducted within the area.

Section 135.243(d)(4) provides that pilots in command not holding instrument ratings may operate within isolated areas during day, VFR conditions with a ceiling of not less than 1,000 feet and visibility not less than 3 statute miles. Two commenters propose that the visibility restriction be changed to 1 statute mile visibility and that the flight be conducted clear of all clouds since most operations are in noncontrolled airspace. The FAA disagrees. Section 135.205(a) prohibits operations under VFR in uncontrolled airspace when the ceiling is less than

1,000 feet and flight visibility is less than 2 statute miles. This applies to all operations under Part 135. The FAA sees no reason to lessen this requirement.

The 3-mile visibility minimum is necessary because it would allow noninstrument-rated pilots additional time to maneuver to alternate landing areas in the event of deteriorating weather in the isolated area. Therefore § 135.243(d)(4) is adopted as proposed.

Section 135.243(d)(5) is adopted as proposed in the notice. This provides that an operation may be conducted when weather reports or forecasts, or any combination of them, indicate that for the period commencing with the planned departure and ending 30 minutes after the planned arrival at the destination, the flight may be conducted under VFR with a ceiling of not less than 1,000 feet and visibility of not less than 3 statute miles. However, if weather reports or forecasts are not available, the pilot in command may use that pilot's observations or those of other persons competent to supply weather observations if those observations indicate the flight may be conducted under VFR with the ceiling and visibility required in this paragraph.

One commenter interprets the proposal to mean that all weather briefings and forecasts must come from local General Aviation District Office (GADO) facilities rather than Flight Service Stations or local forecasting facilities. This interpretation is incorrect. This rule does not change the provisions of § 135.213(a) regarding weather reports and forecasts. These reports and forecasts are not available at GADO's. The provisions for weather reports and forecasts are incorporated in § 135.243(d)(5) to ensure the proper preflight planning to conduct the flight during VFR weather conditions with a ceiling of not less than 1,000 feet and visibility of not less than 3 statute miles. The use of pilot observations or those of other persons competent to supply weather information may also be used when the official reports and forecasts are not available.

Proposed § 135.243(d)(7) limited the distance of each flight from departure point to destination to 250 nautical miles for a pilot in command who holds a commercial pilot certificate with an airplane category rating issued before February 1, 1973, without an instrument rating, or 50 nautical miles in the case of a pilot in command who holds a commercial pilot certificate with an airplane category rating issued after January 31, 1973, without an instrument rating. However, some commercial pilot certificates were issued without

instrument ratings and without mileage limitations after February 1, 1973, in accordance with §§ 61.1 and 61.71. The FAA determined that these pilots should be included in the amendment. The amendment allows operation where the distance of each flight from the certificate holder's base of operation to destination does not exceed 250 nautical miles by a pilot who holds a commercial pilot certificate with an airplane rating without an instrument rating, provided that pilot's certificate does not contain any limitations to the contrary.

Two commenters state that the 250-nautical-mile restriction on distances is acceptable since pilots cannot possibly be familiar with areas outside this limit. Two other commenters disagree and feel that the distance restriction should be relaxed since initial certification training requires longer flights. One commenter asks if 250 nautical miles is good, why not 300 miles or 400 miles? The FAA recognizes that some commenter may believe that a limitation other than 250 miles may be more appropriate. However, it is clear that some limit must be given in this rule. No commenter provided quantitative data to support any other mileage limitation. The 250-nautical-mile limit is approximately 2 hours flight time in the airplanes used in these operations. Operations conducted within this limitation would minimize the effects of rapidly changing weather conditions and more likely result in the pilot in command having sufficient knowledge of the area of operations. The FAA has determined that limiting flights to 250 nautical miles from the certificate holder's base of operations provides an acceptable level of safety. A base of operation can be the certificate holder's main base or one or more bases established at the locations more convenient to the isolated area to be served. The approval of the certificate-holding district office is necessary before establishing or changing the area of operation. Proposed § 135.243(d)(7) is redesignated § 135.243(d)(6) to provide a more logical listing and is adopted with the changes discussed.

Section 135.243(d)(7) (proposed (d)(6)) allows pilots in command to operate without the instrument rating when the areas to be flown are approved by the certificate-holding FAA Flight Standards district office and are listed in the certificate holder's operations specifications. Notice 80-23 proposed approval of routes to be flown. One commenter states that approval on every individual route is impractical due to the numerous routes connected with on-demand charter operations. The FAA

would be unable to approve each route in on-demand operations since these could involve thousands of different variations. Another commenter states that all deviations from the instrument rating rule should be handled by the local GADO. The FAA concludes that the certificate-holding office should have approval authorization of these operations and should approve specific areas of operations subject to review by the regional office. In addition, while Notice 80-23 did not specify what method was to be used for approval of operations by the FAA, it is determined that the areas of operation should be listed in the certificate holder's operations specifications. Therefore, proposed § 135.243(d)(6) is redesignated § 135.243(d)(7) and is adopted with these changes.

§ 135.297 Pilot in Command: Instrument Proficiency Check Requirements.

§ 135.297(b) provides that only those instrument approach procedures which the certificate holder desires to use are required to be demonstrated. Thus, each certificate holder would determine from the characteristics of its operation which procedures it needs. This amendment relaxes requirements and provides the air taxi operator flexibility in electing the kinds of approaches authorized. The certificate holder may elect to use only one kind of approach or several, whatever suits its operation. Safety is maintained by requiring the certificate holder to provide initial and recurrent training for each type of approach to be used. This ensures that each pilot receives flight training to proficiency, as specified in § 135.341(a), on each type of procedure to be used. Therefore, the proposed requirement that training for all instrument approach procedures to be used by the certificate holder should be included in the certificate holder's initial and recurrent training program is repetitive and is deleted. The operator is issued operations specifications which contain the instrument approach procedures authorized.

One commenter opposes the change because, by virtue of the type of flying conducted, an operator will be executing instrument approaches to many different navigational aids. The commenter contends that by allowing an operator to select only those approaches that would normally be used in its operation, it is conceivable that a pilot could be forced to execute an approach he or she is not authorized to use because the kind of approach the pilot planned to use was out of service at the destination. This proposal was initiated because of

numerous certificate holders located at airports where an ILS/NDB is not available and a substantial cost is involved in demonstrating ILS, NDB, and VOR approaches. The amendment provides flexibility in the rule. Operators will have to plan IFR flights carefully to handle the possibility of a facility being out of service.

The previous rules required each pilot in command to demonstrate satisfactorily at least one instrument approach using an ILS, a VOR, and an NDB facility before a letter of competency is issued to that pilot authorizing IFR operations. Some air taxi certificate holders contend that the requirement is too restrictive, especially if they have no need to use these approaches and the nearest facility is located a significant distance from a certificate holder's base of operations.

To ensure an adequate level of safety, § 135.297(b) allows a pilot to use only those precision approach procedures satisfactorily demonstrated. To use any nonprecision instrument approach procedure, a pilot is required to demonstrate satisfactorily that procedure or any other two nonprecision instrument approach procedures. One commenter was unsure as to the identification of nonprecision approaches. Examples of nonprecision approaches are localizer, localizer (back course), VOR, VOR-DME, NDB, and ASR.

As proposed in Notice 80-23, § 135.297(h) is deleted. The certificate holder is required by § 135.63 to maintain records showing the qualifications of its pilots and to designate operations its pilots are authorized to conduct. This includes the types of instrument approach procedures and facilities authorized and pilot-in-command autopilot authorization. Therefore, § 135.297(h) is not needed. Section 135.297(a) is modified to delete the requirement for a letter of competency.

Economic Analysis

The FAA conducted an economic impact study to determine the benefits and costs of the pilot-in-command qualifications and instrument proficiency check requirement revisions for Part 135 certificate holders. The study is included in the regulatory docket for this final rule.

The FAA found that both industry and the FAA would be affected by the regulatory changes. Expected benefits are cost savings. These cost savings include lower fuel expenses resulting from fewer required instrument training and instrument check flights. Costs include the potential operator's

insurance premium reductions if affected pilots had their instrument ratings and the additional FAA workload necessary to issue appropriate operations specifications to operators using pilots without instrument ratings. Neither the FAA nor the industry would incur any additional costs as a result of the changes to the rules on instrument proficiency checks. Finally, the FAA found that the impact on the U.S. economy will be extremely small. The number of certificate holders affected by the changes is small in comparison with the total number of certificate holders. However, the regulatory changes could result in significant time and cost savings to those individuals affected by the pilot-in-command revisions. Therefore these revisions carry out the intent of the Regulatory Flexibility Act by reducing the regulatory burden for essentially small air taxi operators which provide unique service to remote areas of the United States.

To determine the economic impact of the changes to the instrument rating requirement of § 135.243, the FAA surveyed its regional offices and reviewed requests for extension of the compliance date. As a result of the survey, the FAA concludes that there are no more than 100 pilots who would be affected by this rule. Cost savings to the pilots were estimated by multiplying the average number of additional hours of training required for them to obtain instrument ratings by the average training cost per hour, and adding to that total the present value of the potential revenue loss resulting from not being able to fly without an instrument rating. Industry costs are potential operator insurance premium reductions if affected pilots obtained instrument ratings. An operator must pay a risk insurance premium for pilots without instrument ratings. A survey of aviation insurers indicates that operators' insurance premiums would be reduced if they utilize pilots holding instrument ratings. Industry costs were estimated by multiplying the insurance premium risk differential by the number of affected pilots. The present value of these costs was determined because industry costs will accrue each succeeding year an operator uses a pilot without an instrument rating. These costs represent a "worst" case. Actual industry costs may be lower. FAA costs were estimated by calculating the administrative costs required to issue an operations specification and multiplying this figure by the approximate number of Part 135 operators who would request such an action. A major portion of the cost to the FAA would be offset by not

having to process petitions for exemption. The operator's costs to prepare for and travel to a meeting at the certificate-holding Flight Standards district office to get an operations specification were assumed to be insignificant and much less than the cost savings they would accrue.

To calculate the economic benefits of the pilot-in-command instrument proficiency check requirement revisions, the FAA first estimated the percentage of the total certificated commercial pilots who would not have to demonstrate ILS, VOR, and NDB approaches. It estimated that a maximum of 10 percent of the total certificated commercial pilots would be in this category. For the purpose of this analysis, the FAA judged the ILS proficiency check as the most likely check to be foregone. In many cases, an ILS is very far from an affected operator's base. The cost savings to affected operators will result from eliminating the expenses for aircraft operation and pilot time needed for an instrument proficiency check. The present value of the cost savings was determined because an ILS check is required twice a year and a certificate holder who elects not to use ILS approaches will not only accrue cost savings in the year the revision becomes effective but also in each succeeding year. In addition, FAA would save the cost of the administrative time used to perform and rate an instrument proficiency check.

The results of the FAA economic study demonstrate that the savings to affected Part 135 operators, pilots, and Federal Government will exceed any costs incurred in implementing either rule. These savings are summarized in the following table:

Summary of the Present Value of the Economic Impact of Part 135 Pilot-In-Command Revisions

	Benefits	Costs
PIC qualification:		
Industry	\$450,000	\$127,200
Government		2,500
Total	450,000	129,700
PIC instrument check:		
Industry	3,208,210	
Government	326,895	
Total	3,535,105	

The Amendment

Accordingly, Part 135 of the Federal Aviation Regulations (14 CFR Part 135) is amended as follows, effective June 11, 1981.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

1. By amending § 135.243 by adding a new paragraph (d) to read as follows:

§ 135.243 Pilot-in-command qualifications.

(d) Paragraph (b)(3) of this section does not apply when—

(1) The aircraft used is a single reciprocating-engine-powered airplane;

(2) The certificate holder does not conduct any operation pursuant to a published flight schedule which specifies five or more round trips a week between two or more points and places between which the round trips are performed, and does not transport mail by air under a contract or contracts with the United States Postal Service having total amount estimated at the beginning of any semiannual reporting period (January 1-June 30; July 1-December 31) to be in excess of \$20,000 over the 12 months commencing with the beginning of the reporting period;

(3) The area, as specified in the certificate holder's operations specifications, is an isolated area, as determined by the Flight Standards district office, if it is shown that—

(i) The primary means of navigation in the area is by pilotage, since radio navigational aids are largely ineffective; and

(ii) The primary means of transportation in the area is by air;

(4) Each flight is conducted under day VFR with a ceiling of not less than 1,000 feet and visibility not less than 3 statute miles;

(5) Weather reports or forecasts, or any combination of them, indicate that for the period commencing with the planned departure and ending 30 minutes after the planned arrival at the destination the flight may be conducted under VFR with a ceiling of not less than 1,000 feet and visibility of not less than 3 statute miles, except that if weather reports and forecasts are not available, the pilot in command may use that pilot's observations or those of other persons competent to supply weather observations if those observations indicate the flight may be conducted under VFR with the ceiling and visibility required in this paragraph;

(6) The distance of each flight from the certificate holder's base of operation to destination does not exceed 250 nautical miles for a pilot who holds a commercial pilot certificate with an airplane rating without an instrument rating, provided the pilot's certificate does not contain any limitation to the contrary; and

(7) The areas to be flown are approved by the certificate-holding FAA

Flight Standards district office and are listed in the certificate holder's operations specifications.

2. By amending § 135.297 by removing paragraph (h) and by revising paragraphs (a) and (b) to read as follows:

§ 135.297 Pilot in command: Instrument proficiency check requirements.

(a) No certificate holder may use a pilot, nor may any person serve, as a pilot in command of an aircraft under IFR unless, since the beginning of the 6th calendar month before that service, that pilot has passed an instrument proficiency check under this section administered by the Administrator or an authorized check pilot.

(b) No pilot may use any type of precision instrument approach procedure under IFR unless, since the beginning of the 6th calendar month before that use, the pilot satisfactorily demonstrated that type of approach procedure. No pilot may use any type of nonprecision approach procedure under IFR unless, since the beginning of the 6th calendar month before that use, the pilot has satisfactorily demonstrated either that type of approach procedure or any other two different types of nonprecision approach procedures. The instrument approach procedure or procedures must include at least one straight-in approach, one circling approach, and one missed approach. Each type of approach procedure demonstrated must be conducted to published minimums for that procedure.

(Secs. 313(a) 601 through 605 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1425); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.45)

Note.—The FAA has determined that this regulation relaxes requirements for certain operators. It therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant regulation" under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The regulatory evaluation contained in the docket shows that this rule relieves an economic burden on certain small entities. A copy of the evaluation may be obtained from the person identified under the caption "For Further Information Contact."

Issued in Washington, DC, on May 11, 1981.

J. Lynn Helms,
Administrator.

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