



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

800 Independence Ave., SW.
Washington, DC 20591

Mr. David Wartofsky
Potomac Aviation
Potomac Airfield
10300 Glen Way
Ft. Washington, MD 20744

Dear Mr. Wartofsky:

This letter is a response to your verbal inquiry to Flight Operations Branch (AFS-410) of the Flight Technologies and Procedures Division (AFS-400) concerning visibility and landing minimums.

Question:

Is visibility, as opposed to ceiling *and* visibility, the criterion required by applicable portions of 14 Code of Federal Regulations (CFR) to initiate an instrument approach?

Answer:

To completely answer the question, pertinent sections of 14 CFR 91, 97, 121 and 135 require discussion. Statutory construction techniques allow us to analyze preamble and regulatory language and determine the intent of the drafters. Sutherland Statutory Construction (Sutherland) will provide the established aids and techniques for our review.

Sutherland states that in accordance with the “whole act” theory of interpretation “[n]either the preamble nor the purview controls, but the entire act must be read together because no part of the act is superior to any other part.” Sutherland also states that the “[P]reamble cannot control the enacting part of the statute..., but “... the preamble may be resorted to help discover the intention of the law maker.” Therefore, a principle of statutory construction is that the preamble language may be used to help discover the intent of the drafters of the regulations.

Our review starts with the actual language of the pertinent regulations as introduced by the preamble. We use the “plain meaning rule” of statutory construction where words should be given their common and approved usage. Dictionary definitions generally satisfy this principle. Our research reveals that the intent of the regulatory drafters dramatically shifted in 1967. To provide contrast between the intent of the drafters and to provide conformation of our interpretation, the pertinent sections of 14 CFR are discussed prior to 1967 and after 1967.

Pertinent Regulations Prior to 1967

Some of the earliest aviation regulations were the Civil Air Regulations (CAR). The CAR contained both ceiling and visibility criteria for landing and takeoff. The CAR contained interpretations along with the regulations. Section 40.406 of Part 40, Scheduled Interstate Air Carrier Certification and Operation Rules, was interpreted in 23 Federal Register 5235 (July 10, 1958). Interpretation 40.406-1 states:

IFR takeoff and landing, and instrument approach procedure, weather minimums (CAA-interpretations which apply to 40.406-(a) General.). The *ceiling and visibility* contained in the main body of the latest weather report ... *will control* for instrument approach procedures and *landings and takeoffs* for all runways.... (emphasis added)

Research of the pertinent regulations as of January 1, 1966, reveals § 97.3, Symbols and terms used in procedures, of part 97, Standard Instrument Approach Procedures, did not contain any “symbol” or “term” related to ceiling or visibility.

Section “91.117 Takeoff and landing under IFR.” subparagraph “(h) Descent below IFR landing minimums” prohibits beginning an Instrument Landing System (ILS) approach when “any component of the ILS is inoperative ... except ... (i)(1) ... a straight-in approach may be made if the *ceiling and visibility at the airport are at least equal to 300 feet and ¾ statute mile, respectively.*” The subsequent subparagraph lists components required for an instrument approach at a destination and an alternate airport and each subsection refers to ceiling and visibility requirements. (emphasis added)

Section “135 .111 IFR: Takeoff, approach, and landing minimums.” states that in accordance with subparagraph “(b)” an “instrument approach procedure” can be initiated “when the latest weather report indicates that the prescribed *ceiling and visibility minimums* exist...” Subparagraph “(c)” states, “The *ceiling and visibility* landing ... increased by 100 feet and one-half mile respectively, but not to exceed the *ceiling and visibility* minimums for that airport when used as an alternate...” Finally, subparagraph “(d),” which concerns IFR takeoffs or approaches at a military or foreign airport, states in pertinent part that “In addition, no pilot may, at such an airport-... (2) Make an instrument approach when the *ceiling is less than 200 feet or the visibility is less than one-half mile.*” (emphasis added)

In response to comments on § 135.111, the agency in 29 Federal Register 2991 (March 5, 1964) at page 2988 stated “[C]ontinuation of an IFR approach is permitted *where it is commenced under weather reports indicating above minimum ceiling and visibility...*” (emphasis added)

Section 121.651 of Part 121 is even more restrictive than Part 135 by stating “(b) [N]o pilot may execute an instrument approach procedure ... under IFR ... if the latest U.S. Weather Bureau Report ... that the *ceiling OR visibility* is less than that prescribed by the Administrator for landing...” Subparagraph “(d)” states that when the pilot can initiate “an instrument approach procedure” when the “prescribed *ceiling and visibility*

minimums exist...” The same regulatory scheme is applied to supplemental air carriers and commercial operators in § 121.653. (emphasis added)

Using our statutory construction techniques, we conclude that the intent of the drafter of the pertinent regulations prior to 1967 clearly had ceiling and visibility criteria to initiate an instrument approach. The exception to ceiling *and* visibility requirements is the more restrictive regulatory scheme of Part 121, which had a requirement for ceiling *or* visibility, before initiating an instrument approach.

Pertinent Regulations After 1967

In 1967 “miscellaneous amendments” were made to 14 CFR Parts 1, 91, 97, 121 and 135. The preamble to the miscellaneous amendments in 32 Federal Register 13909 (October 6, 1967) entitled TERMINAL INSTRUMENT PROCEDURES (TERPS); IMPLEMENTATION OF U.S. STANDARD states:

The purpose of these amendments to Parts 1, 91, 97, 121 and 135 of the Federal Aviation Regulations is to implement new techniques and criteria associated with the U.S. Standard for Terminal Instrument Procedures, hereinafter referred to as Terps.

[T]he notice is proposed to immediately convert each present ceiling value in the instrument approach procedures to a minimum decent[sic] altitude or decision height, as appropriate, and replace the present rules with the new rules governing minimum descent altitude (MDA) or decision height (DH). Comments received in response to this proposal indicated a strong preference for immediate conversion of ceiling values to MDA and DH. Accordingly provision has been made in 91.116(b) for converting landing ceiling minimums, prescribed in procedures issued under the old criteria, to MDA or DH by summing the ceiling minimum with the field elevation. *The visibility minimum will be the applicable landing minimum, and the descent will be limited by the minimum descent altitude (MDA) or decision height (DH), obtained by summing the prescribed ceiling minimum and published field elevation.* (emphasis added)

The preamble also refers to takeoff weather minimums by stating:

Where takeoff minimum are presently prescribed in the procedure in terms of ceiling and visibility, the *ceiling minimum, as well as the visibility minimum*, will continue in effect as a limitation for *takeoff* pending review and reissuance of the procedure under the revised criteria. When reissued under TERPS, ceiling minimums will no longer be prescribed for takeoff, except for those runways where a ceiling minimum is required to enable to the pilot to see and avoid obstructions.

The preamble referring to Part 97 states at page 13910:

The proposed amendment to Part 97 which provided for deletion of the words “ceiling minimum” wherever it appeared as a limitation on the making of an instrument approach has been deleted, and the provision for summing the ceiling minimum and field elevation to obtain the MDA or DH has been substituted in § 91.116(b).

The 1967 “miscellaneous amendments” of Part 1 included adding the definitions of “Minimum descent altitude,” Precision approach procedure,” and “Nonprecision approach procedure.” Section “91.116 Takeoff and landing under IFR: General.” was amended to state “(b) Landing minimums. ... If the landing minimum in a standard instrument approach procedure prescribed in Part 97 of this chapter is stated in terms of ceiling and visibility, *the visibility minimum applies*. However, the ceiling minimum shall be added to the field elevation that that value observed as the MDA or DH, as appropriate to the procedure being executed.” Section 91.116 became § “91.175(d) Landing. No pilot ... may land that aircraft when the *flight visibility* is less than the visibility prescribed in the standard instrument approach procedure being used.” (emphasis added)

The 1967 “miscellaneous amendments” of § “97.3, Symbols and terms used in procedures, of Part 97, Standard Instrument Approach Procedures,” includes the definitions of:

As used in the standard terminal instrument procedures prescribed in this part –

...

(e) *Ceiling minimum* means the minimum ceiling, expressed in feet above the surface of the airport, required for takeoff or required for designating an airport as an alternate airport.

...

(x) *Visibility minimum* means the minimum visibility specified for approach, or landing, or takeoff, expressed in statute miles, or in feet where RVR is reported.

Another intrinsic aid of statutory construction is the maxim that all omissions should be treated as an exclusion. Prior to 1967 the regulations referred to both ceiling and visibility as criteria for initiating an approach and landing. After the 1967 “miscellaneous amendments” were made to 14 CFR Parts 1, 91, 97, 121 and 135, in 32 Federal Register 13909 (October 6, 1967) ceiling was “excluded” as a criterion to initiate an approach. This “exclusion” is confirmed in the definitions in §97.3 above. Ceiling is required “for *takeoff* or required for designating an airport as an alternate” and since visibility is omitted, it is “excluded” from the definition of ceiling. The definition of visibility is “specified” for “*approach, or landing, or takeoff*” and “excludes” ceiling in that definition. (emphasis added)

The 1967 “miscellaneous amendments” of “121.651 Takeoff and landing weather minimums: IFR: All certificate holders.” of 14 CFR Part 121 states:

“(b) no pilot may continue an approach past the final approach fix ... (2) At airports within the United States ... unless the latest weather report for that airport ... reports the *visibility* to be equal to or more than the *visibility minimums* prescribed for that procedure.” (emphasis added)

Section 135.111 was modified by the 1967 “miscellaneous amendments.” The amendment eliminated “ceiling” as a criterion for initiating an approach and landing and the resulting language was very definitive. In 1978 the FAA “upgraded” 14 CFR Part 135 in 43 Federal Register 46742 (October 10, 1978). During that “upgrade” § 135.111 became § 135.225.

Section 135.225, which was created during the 1978 “upgrade” to Part 135, is the most problematic of the regulations dealing with ceiling and visibility. This section is problematic because it uses general terms of “IFR landing minimums,” “minimum conditions,” and “weather conditions” as criteria for an instrument approach. Because § 135.225 does not refer or use the term “visibility,” the language of this section is not as definitive as its predecessor, the former § 135.111. Additionally, § 135.225 by use of this broader and more general terminology is decidedly different than the definitive language currently contained in the other pertinent sections of the regulations.

Although careful drafting would have avoided any question created by inconsistency of terminology, we must resort to our statutory construction techniques to provide us with guidance and to resolve the issue. Sutherland states that “The presumption is that the lawmaker has a definite purpose in every enactment and has adapted and formulated the subsidiary provisions in harmony with the purpose.” An absurdity would result if in 1967 all pertinent regulations in 14 CFR including Part 135 eliminated ceiling as a criterion for an instrument approach and landing and the 1978 “upgrade” to Part 135, without any notice in the preamble, created a different intent only for Part 135. In keeping with the “harmony of purpose” of the drafters and avoiding an “unfair, unjust, and unworkable” result, we can only conclude that the language, however general, in § 135.225 means visibility is the criterion to initiate an instrument approach.

Advisory Circular (AC) 90-1A dated April 10, 1968, explains the changes to the regulations in 1968 by “4. GENERAL. Amendments 1-14, 91-44, 97-561, 121-33, and 135-7 of the Federal Aviation Regulations effective November 18, 1967, implement new techniques and criteria associated with the U.S. Standard for Terminal Instrument Procedures (TERPS) ... There will be a changeover period pending issuance of all procedures in Subpart C during which the procedures that were issued under Subpart B will still be portrayed on charts in the existing (old) format. In such cases, that applicable symbols and terms defined in FAR Sections 1.1, 1.2, and 97.3 will apply to those procedures *except for the terms ceiling and visibility with respect to landing minimums.*” (emphasis added)

AC 90-1A in “3. DISCUSSION OF MAJOR CHANGES” section “a. Minimum Descent Altitude (MDA/Decision Height (DH) Concept.” states “(1) Landing minimums. FAR sections 91.116 and 91.117, effective November 18, 1967, contain new rules applicable to landing minimums. *Ceiling minimums are no longer prescribed in approach procedures a landing limit. The published visibility is the required weather condition for landing as prescribed in FAR 91.116b. FAR 91 now allows approach down to the prescribed minimum descent altitude (MDA) or decision height (DH), as appropriate to the procedure being executed, without regard to reported ceiling.*” (emphasis added)

The Instrument Flying Handbook (Federal Aviation Administration, FAA-H-8083-15, 2001) states regarding Instrument Approach Procedures Charts on page 8-3, “Minimums and Notes” that “The minimums section sets forth the lowest altitude and visibility requirements for the approach....” An important point is that the Instrument Flying Handbook refers to “altitude” not “ceiling” along with “visibility.”

Based on our analysis of the pertinent regulations of 14 CFR that apply to initiating an instrument approach, we conclude that as of the “miscellaneous amendments” made to 14 CFR Parts 1, 91, 97, 121 and 135 in 32 Federal Register 13909 on October 6, 1967, visibility became its sole criterion to initiate an instrument approach.

We hope this answers your inquiry, but please be advised that this document is not a legal interpretation. The FAA’s Office of the Chief Counsel is the only element with FAA authorized to issue legal interpretations. Also be advised that Flight Technology and Procedures Division, AFS-400, is coordinating this document with the Air Transportation Division, AFS-200, and the General Aviation Division, AFS-800. The Flight Technology and Procedures Division, AFS-400, reserves the right to alter or amend this document after receiving input from the other FAA divisions. If you have any questions concerning this letter, please do not hesitate to contact Mr. Dave Metzbower at (202) 267-3724.

Sincerely,



John W. McGraw
Manager, Flight Technologies and
Procedures Division, AFS-400