

**FAA Responses**

**OPERATIONAL FACTORS**

CEN17MA183

**From:** [REDACTED]  
**Sent:** Tuesday, October 31, 2017 11:29 AM  
**To:** Lawrence David <[REDACTED]>  
**Cc:** [REDACTED]  
**Subject:** NTSB Request 17-246

Hi Capt. Lawrence,

This is in response to NTSB Request 17-246.

The holder of a part 135 Air Carrier certificate, TransPacific conducted a flight to re-position an aircraft from TEB to Bedford, MA (BED) to pick up clients for a flight from BED to Philadelphia, PA (PHL). After the flight to PHL, the air carrier then repositioned the aircraft to TEB. The re-positioning flights were conducted without persons or property on-board being carried for compensation or hire and were conducted under the provisions of 14 CFR part 91.

The NTSB states the air carrier invoiced the client for the repositioning flights and the operator was compensated for them.

Operations Specification (OpSpec) paragraph A001, subparagraph d, allows for certain flights, including re-positioning flights, to be conducted under 14 CFR part 91 but contains the limitation. "... provided the flights are not conducted for compensation or hire and no charge of any kind is made for the conduct of the flights."

The NTSB asks whether the repositioning flights from TEB to BED and PHL to TEB should have been conducted under part 135 as the invoice included those flights, and the operator was compensated for them.

Research of the original intent of subparagraph d of the OpSpec reveals the intent was to eliminate the need or confusion regarding having to obtain a separate letter of authorization for the listed operations. The reference to compensation or hire was not in the initial language proposed for subparagraph d. In 2002, an amendment, meant to address operations under part 125, added the language to read "... provided the flights are not conducted for compensation or hire and no charge is made under the applicable provisions of parts 91 and 125. In 2003, due to changes in part 125, the verbiage was changed to "no charge of any kind is made for the conduct of the flights."

Repositioning flights can reasonably be characterized as ferry flights and the FAA interprets ferry flying to be "other commercial flying" which may be conducted under part 91 operating rules, pursuant to 119.1 (e)(3). These ferry flights can operate under 91.501(b)(1), when common carriage is not involved.

In order for these flights to be required to be conducted under 14 CFR part 135, certain requirements must be met. One of those requirements is that passengers and/or cargo are being transported for compensation or hire. As this was not the case with the flight from TEB to BED and PHL to TEB, these flights were not required to be conducted under part 135. While this operator may have appeared to conduct re-positioning flights contrary to the language contained

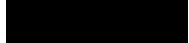
in OpSpec A001, they did not do so contrary to the intent of that paragraph or in violation of 14 CFR part 135.

In consideration of the above. AFS-200 initiated a change to OpSpec A001 to clarify subparagraph d to remove the non-regulatory language.

Regards,



Anne Torgerson  
Program Analyst  
FAA  
Accident Investigation Division (AVP-100)



**From:** [REDACTED]

**Sent:** Wednesday, February 28, 2018 12:06 PM

**To:** Lawrence David [REDACTED]

**Cc:** [REDACTED]

**Subject:** NTSB Request 18-067

Hi Capt. Lawrence,

This is in response to NTSB Request 18-067. The following answers are to question #1 - Based on the investigation, it was discovered that TEB ATC was issuing approach clearances to required aircraft to maneuver outside protected airspace.

Was TEB ATC aware of this?

Was this the same clearance given to aircraft on the circling approaches during IMC conditions?

**FAA's response:** ATC was not aware that approach clearances were being issued to required aircraft to maneuver outside protected airspace.

This same clearance had not been given to aircraft on circling approaches during IMC conditions.

The New York Tracon (N90) has conferred with the Quality Control Group regarding this matter and has since issued a Mandatory Briefing Item to all operational personnel which clarifies clearance procedures for circling approaches.

Regards,

[REDACTED]

Anne Torgerson  
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[REDACTED]



# Federal Aviation Administration

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## Memorandum

Date: [REDACTED] FEB 14 2018

To: All Areas and TMU

SELF  
BRIEFING

From: [REDACTED] Jeffrey Szczygielski, Air Traffic Manager, New York TRACON

Prepared By: Quality Assurance/Quality Control

Subject: Circling Approach Phraseology; Bulletin #18-19

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With regard to issuing a circling approach clearance, instructing an aircraft to begin its turn *at* a specific point may not allow the aircraft to remain within protected airspace for circling.

However, instructing an aircraft to begin its turn *after* a specific point does allow the aircraft to remain within the protected airspace for circling, as the responsibility to comply with approach procedures remain with the pilot.

As a reminder and in accordance with 7110.65 Par. 4-8-6 c:

*Do not issue clearances...which might cause an aircraft to exceed the circling approach area distance from the runways within which required circling approach obstacle clearance is assured.*

This has been issued collaboratively between NATCA and the Agency.

All affected personnel will receive a mandatory self-briefing on the subject matter.

Attachment

#### 4-8-2. CLEARANCE LIMIT

Issue approach or other clearances, as required, specifying the destination airport as the clearance limit if airport traffic control service is not provided even though this is a repetition of the initial clearance.

**PHRASEOLOGY-**

*CLEARED TO (destination) AIRPORT*

#### 4-8-3. RELAYED APPROACH CLEARANCE

**TERMINAL**

Include the weather report, when it is required and available, when an approach clearance is relayed through a communication station other than an air carrier company radio. You may do this by telling the station to issue current weather.

#### 4-8-4. ALTITUDE ASSIGNMENT FOR MILITARY HIGH ALTITUDE INSTRUMENT APPROACHES

Altitudes above those shown on the high altitude instrument approach procedures chart may be specified when required for separation.

**NOTE-**

*To preclude the possibility of aircraft exceeding rate-of-descent or airspeed limitations, the maximum altitudes which may be assigned for any portion of the high altitude instrument approach procedure will be determined through coordination between the ATC facility concerned and the military authority which originated the high altitude instrument approach procedure.*

**REFERENCE-**

*FAA Order JO 7110.65, Para 4-7-5, Military Turbojet En Route Descent.*

#### 4-8-5. SPECIFYING ALTITUDE

Specify in the approach clearance the altitude shown in the approach procedures when adherence to that altitude is required for separation. When vertical separation will be provided from other aircraft by pilot adherence to the prescribed maximum, minimum, or mandatory altitudes, the controller may omit specifying the altitude in the approach clearance.

**NOTE-**

*Use FAA or NGA instrument approach procedures charts appropriate for the aircraft executing the approach.*

#### 4-8-6. CIRCLING APPROACH

**a.** Circling approach instructions may only be given for aircraft landing at airports with operational control towers.

**b.** Include in the approach clearance instructions to circle to the runway in use if landing will be made on a runway other than that aligned with the direction of instrument approach. When the direction of the circling maneuver in relation to the airport/runway is required, state the direction (eight cardinal compass points) and specify a left or right base/downwind leg as appropriate.

**PHRASEOLOGY-**

*CIRCLE TO RUNWAY (number),*

*or*

*CIRCLE (direction using eight cardinal compass points) OF THE AIRPORT/RUNWAY FOR A LEFT/RIGHT BASE/DOWNWIND TO RUNWAY (number).*

**NOTE-**

*Where standard instrument approach procedures (SIAPs) authorize circling approaches, they provide a basic minimum of 300 feet of obstacle clearance at the MDA within the circling area considered. The dimensions of these areas, expressed in distances from the runways, vary for the different approach categories of aircraft. In some cases a SIAP may otherwise restrict circling approach maneuvers.*

**c.** Do not issue clearances, such as “extend downwind leg,” which might cause an aircraft to exceed the circling approach area distance from the runways within which required circling approach obstacle clearance is assured.

#### 4-8-7. SIDE-STEP MANEUVER

**TERMINAL**

Side-step Maneuver. When authorized by an instrument approach procedure, you may clear an aircraft for an approach to one runway and inform the aircraft that landing will be made on a parallel runway.

**EXAMPLE-**

*“Cleared I-L-S Runway seven left approach. Side-step to runway seven right.”*

**NOTE-**

*Side-step maneuvers require higher weather minima/MDA. These higher minima/MDA are published on the instrument approach charts.*

**REFERENCE-**

*FAA Order JO 7110.65, Para 3-3-2, Closed/Unsafe Runway*