

includes the words “whichever is less” in § 91.509(b) to clarify that under the current rule the phrase “within 30 minutes flying time or 100 nautical miles” means whichever is the closest to shore.

In response to the comment about deviations in the interest of safety, it is not necessary to include that language in this rule because § 91.3(b) allows a pilot to deviate from any FAA rule to the extent required to meet an in-flight emergency requiring immediate action.

IFR Takeoff, Approach and Landing Minimums (§§ 91.1039 and 135.225)

NATA and Flexjet fully support the proposed alternative means of complying with the destination airport weather reporting facility requirements under part 135 and the proposal to apply the same requirements and alternatives in part 91, subpart K.

The Teamsters, a fractional pilot, and an individual question the safety of allowing operations into airports that do not have on-site weather reporting facilities. These commenters believe that this proposed change would reduce the level of safety now provided by § 135.225 and establish an inadequate level of safety for fractional owner operations.

A flight operations manager states that as proposed, every time a part 135 or fractional program flight was to depart for an airport without weather reporting, an alternate airport must be designated regardless of the current or forecast weather. The commenter states that this in many cases would require an aircraft to make unnecessary fuel stops to assume instrument flight rules (IFR) fuel reserves even if the weather were VMC (visual meteorological conditions). The commenter suggests specific language that in effect would tie the requirement more specifically to the forecast weather at a facility within 25 NM of the destination airport.

Kaiser Air questions the practicality of a PIC's ensuring that the required “visibility is maintainable for the entire length of the runway” as is required by proposed § 91.1039(e). This commenter also states that § 135.225(h) should state specifically what sections in part 91 are being referenced. Furthermore, Kaiser Air states that there is no apparent change to part 135 that specifically gives a level playing field with part 91 subpart K regarding take-off minimums found in § 91.1039(d) and (e). Kaiser believes part 135 should get relief for take-off minimums.

FAA Response: The FAA disagrees with commenters that question the safety of operations into airports without weather reporting facilities.

Fractional ownership operations currently have no weather reporting requirements at the destination airport. This final rule provides a safety benefit by requiring weather reporting at the destination airport or requiring that an alternate airport with weather reporting be designated. Also a current local altimeter setting must be available for both airports.

Current § 135.225(a) prohibits initiation of an instrument approach at a destination airport unless that airport has a weather reporting facility on the field. The final rule provides an alternative means of compliance for eligible part 135 on-demand operators to initiate an instrument approach at a destination airport that does not have weather reporting facilities. The on-demand operator must designate an alternate airport with weather reporting facilities, have a current local altimeter setting for both airports, and meet additional crew qualification and pairing requirements.

The FAA believes that technologies and aviation weather services have improved and been implemented to support this alternative. Further, this provides a safety benefit by allowing an operator to plan and conduct a stabilized instrument approach to an airport.

The FAA disagrees with the commenter who states that an alternate airport must be designated regardless of current or forecast weather, and that operators would need to carry additional fuel, even if the weather was VMC. This final rule provides an alternative means to enable an operator to plan and conduct a flight under IFR to a destination airport that does not have weather reporting and to initiate and conduct an instrument approach at that airport. It does not prohibit an operator from conducting a flight to that airport under VFR. Designation of an alternate airport is not required if the approach can be conducted under VFR. Section 135.213 allows the pilot to make a determination of weather conditions for operations under VFR, based on the pilot's own observations.

The FAA agrees in part with Kaiser Air on the practicality of having the pilot determine, as provided in § 91.1039(e), that the “visibility is maintained for the entire length of the runway.” For low visibility operations there may be additional criteria, such as runway lighting or markings, required for these operations. The FAA has amended the regulatory language to impose a takeoff limit of 600 feet for fractional ownership program operations, without specifying the method for determining the visibility.

Management specifications and other guidance will provide the weather reporting requirements and other criteria for determining visibility in conducting takeoffs in these conditions.

Kaiser Air is correct that a change in takeoff minimums for part 135 operations was not proposed. Since this was not proposed in the NPRM, a change to part 135 takeoff minimums and weather reporting requirements for takeoff is beyond the scope of this rulemaking.

Drug and Alcohol Testing Programs (§§ 91.1047, 135.251 and 135.255)

PASS, NWJ, Aviation Charter Services, and an individual believe that § 91.1047 individuals need to be on an FAA approved drug program (which includes testing), not just receive drug education training. PASS states that the testing and training should be documented and that a current list would be made available to the Administrator. NWJ and the individual state that not requiring a Federally mandated testing program will result in inconsistencies and a lack of standardization among fractional operations, as well as among the maintenance vendors that support them. These commenters believe that § 91.1047(c)(3) does not provide enough clarification or consistency to properly enforce the spirit of the proposed regulation.

NWJ and the individual commenter praise FOARC and the FAA for providing part 135 operators with relief from drug and alcohol testing under the provisions of §§ 135.251(c) and 135.255(c).

Two other commenters object to the proposed relaxation for emergency maintenance situations under part 135. One of the commenters states that allowing for the use of maintenance personnel not currently covered by a DOT drug and alcohol program to perform “emergency maintenance” on fractional aircraft when there are no available maintenance personnel could be open to interpretation by the FAA and could lead an operator down the wrong path.

PASS believes that there should be a procedure to re-inspect an aircraft at its next destination after emergency maintenance has been performed and that passengers should not be carried on-board the aircraft until the emergency maintenance has been inspected by a qualified mechanic.

EJA and Flexjet suggest changing “program” in the title of § 91.1047 to “education” to avoid confusion because “program” was used in the title of the