

October 27, 1999

Bill Landis
Aspen Aviation, Inc.
69 East Airport Road, Suite B
Aspen, CO 81611

Dear Mr. Landis:

This is in response to your letter of September 15, 1999, asking whether FAR Part 97 ceiling and visibility minima are applicable to Part 91 operations using the Aspen, Colorado, Lindz 3 SID departure. Your letter notes that section 97.1 describes the weather minimum which applies to takeoffs and landings at airports with standard instrument approach procedures. Section 91.175(f) further states that no pilot operating an aircraft under Parts 121, 125, 127, 129, or 135...may takeoff from a civil airport under IFR unless the weather conditions are at or above the weather minimum for IFR takeoff prescribed for the airport under Part 97.

My research has indicated that when section 91.116(c)-the predecessor to the current section 91.175-was first proposed for adoption in 1967, this issue arose and was addressed as follows:

Several comments indicated that section 91.116(c) of the proposal could be interpreted to apply civil airport takeoff minimums to aircraft operators other than those operating under Part 121, 129, or 135. As this result was not intended [underline added], the language of the paragraph as adopted herein has been changed to make it clear that the minimums apply to aircraft operating under 121, 129, or 135 (32 FR 13909 Oct 6, 1967).

Accordingly, I am constrained to agree with your analysis that a Part 91 flight can depart in weather conditions less than the minima prescribed for the SID.

Your letter advises that the Aspen Air Traffic Control Tower routinely offers the Lindz 3 departure and takeoff clearances to pilots when the weather is below the minimums listed in the SID. In my view, the fact that the Air Traffic Control Tower may issue Lindz 3 departure clearances when the weather is below minimums is not particularly relevant because it is the pilot's responsibility to comply with weather requirements for the operation of aircraft, not Air Traffic Control's. In addition, the pilot has the option to accept or refuse the SID unless an air carrier's operations manual specifically requires the use of a particular SID. The Air Traffic Control Tower merely provides for the separation of aircraft, and the issuance of a takeoff clearance, in itself, by Air Traffic will not insulate a pilot from a violation resulting from an operation in weather

conditions below applicable minimums if the pilot has not previously filed an IFR flight plan.

Your letter also asks whether a category C aircraft operating under Part 135 or Part 91 can request and fly the approach at Telluride, Colorado, using the FAF altitude as MDA when the AWOS is reporting VFR weather in anticipation of a contact or visual approach. If you are asking if a category C aircraft can execute the procedure, the answer is no. The approach procedure is clearly not applicable to category C or D aircraft.

Sincerely,

George L. Thompson
Regional Counsel