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

Office of the Chief Counsel

Office of the Chief Counsel
800 Independence Ave., SW.
Washington, DC 20591

OCT 25 2012

Major Mark E. Gibbons
Commander, Aviation Command
Maryland State Police
3023 Strawberry Point Road
Baltimore, MD 21220

Dear Major Gibbons:

Thank you for your letter of August 20, 2012, to FAA Chief Counsel Kathryn Thomson requesting an interpretation of Second in Command (SIC) requirements under 14 CFR parts 61 and 142. Following receipt of your letter, on September 18, a member of my staff spoke with Chris Lovejoy of your staff regarding the situation you described. Mr. Lovejoy faxed us several pages of documents that were referred to in your request but were not included in the original package.

We understand your situation as follows. The Maryland State Police (MSP) has contracted with AgustaWestland Philadelphia Corporation (Agusta) to purchase up to 12 AW-139 model helicopters. Included in the purchase price was ground and flight simulator training for MSP pilots to be provided by Agusta's subsidiary Rotorsim, an approved part 142 flight simulator training center.

In February 2012, the first four MSP pilots completed the initial training and received a helicopter type rating for the AW-139 issued under part 61 without limitation. In March 2012, MSP was informed that all type ratings for the AW-139 would now have an "SIC Required" limitation despite the fact that previously trained individuals were issued ratings without limitation. Rotorsim staff believed that this limitation could be overcome by developing the proper curriculum units, which would lead to the removal of the SIC required limitation.

In June, follow-up calls were made to Principal Operations Inspector (POI) Robert Lynch in the FAA's New York International Field Office (IFO). Mr. Lynch indicated that his approval of additional curriculum units would not be sufficient to overcome the SIC Required limitation, but that he had not received any confirmation or guidance from his superiors. The MSP contacted Mr. Lynch's supervisor, Robert Jaffe, requesting clarification of the requirement as well as instructions and guidance on what MSP and Rotorsim needed to accomplish to permit the operation of the AW-139 "to the limits of its Aircraft Type Certificate."

On August 9, the MSP received a reply from the New York IFO concluding that the SIC Required limitation is an appropriate pilot certificate limitation based on § 61.63(d)(4), guidance in FAA Order 8900.1, and the type certificate data sheet (TCDS) for the AW-139.

Your letter to us indicates that such a limitation was not foreseen by MSP, Agusta, or Rotorsim, and that imposing it will impose a "significant logistical and financial hardship" on the MSP and ultimately the citizens of Maryland. You request a legal interpretation of the New York IFO's findings, and again request written instruction on what would be necessary to permit the operation of the helicopters without the SIC Required limitation. You have also indicated that delivery of the helicopters under the purchase contract may begin as soon as late October 2012.

Our initial reaction to your letter was to inquire whether these helicopters were to be operated by the MSP as public aircraft operations pursuant to 49 USC §§ 40102(a)(41)(C) and 40125 (the public aircraft statute). That statue does not require the operators of public aircraft to meet the pilot training requirements found in part 61 that apply to civil operators of aircraft, nor could the MSP be found in violation of such regulations when operating only as a public aircraft as defined in the statute.

However, in our conversation with Mr. Lovejoy, he indicated that the MSP is seeking the ability to operate as a civil operator, and that it has applied for a part 135 operating certificate. That status, while not final, would require that your pilots be fully qualified under part 61, as would any operations conducted under Part 91.

Since receiving your letter, we have been in contact with the FAA's Flight Standards Service, which oversees the issues described in your letter. We have determined that issuing the type rating for the AW-139 with an SIC Required limitation was a reasonable interpretation of 14 CFR §§ 61.63 and 61.43. However, Flight Standards is updating its guidance as follows regarding the issuance of the AW-139 type rating.

For those pilots who have been issued an AW-139 type rating subject to the SIC Required limitation, §61.43(b)(3) provides a mechanism to remove the limitation by demonstrating single pilot proficiency in the aircraft. Because of the minimum crew requirements listed in the AW-139 TCDS (allowing single pilot operation under visual flight rule (VFR) conditions), a single-pilot evaluation must be conducted under VFR conditions. Going forward, pilots seeking an AW-139 type rating could take a practical test that incorporates a segment under instrument conditions with two pilots to satisfy §61.63(d)(4), plus a segment under VFR conditions with one pilot to demonstrate proficiency in the aircraft.

The Principal Operations Inspector for Rotorsim will be contacting you and Rotorsim to discuss the specific steps necessary for your pilots to demonstrate single pilot proficiency and to remove the SIC Required limitation currently in place.

We trust that this information responds to your inquiry. If you need further assistance, please contact my staff at 202-267-3073. This response was prepared by Karen Petronis, Senior Attorney on my staff, and Robert Hawks, Attorney on my staff, and was coordinated with the General Aviation and Commercial Division of the Flights Standards Service.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for International
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