U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

MAY 2 7 2016

Candise Tu
2206 Palomar Airport Road, Ste. H
Carlsbad, CA 92011

Re: Compliance with Recency of Operation Requirements

Dear Ms. Tu:

This letter is provided in response to your request for a legal interpretation sent to the Regulations Division of the Office of the Chief Counsel on December 15, 2015. You ask four questions regarding the notice and recency requirements of 14 C.F.R. § 119.63.[1] The following discussion addresses each of the four questions sequentially.

1) *Does a certificate holder have to provide "time of the flight, origin, destination, and nature of the flight" in order to comply with 14 CFR § 119.63(b)?*

No, the FAA does not require that specificity of information with respect to the notification itself.

2) *Assuming I did provide "time of the flight, origin, destination, and nature of the flight," would a subsequent change in the customer's request (i.e. time, date, destination, etc.) render the prior notification invalid and would conducting such a flight constitute a violation of 14 CFR § 119.63?*

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[1] (a) Except as provided in paragraph (b) of this section, no certificate holder may conduct a kind of operation for which it holds authority in its operations specifications unless the certificate holder has conducted that kind of operation within the preceding number of consecutive calendar days specified in this paragraph:

(1) For domestic, flag, or commuter operations – 30 days.
(2) For supplemental or on-demand operations – 90 days, except that if the certificate holder has authority to conduct domestic, flag, or commuter operations, and has conducted domestic, flag, or commuter operations within the previous 30 days, this paragraph does not apply.

(b) If a certificate holder does not conduct a kind of operation for which it is authorized in its operations specifications within the number of calendar days specified in paragraph (a) of this section, it shall not conduct such kind of operation unless—

(1) It advises the Administrator at least 5 consecutive calendar days before resumption of that kind of operation; and
(2) It makes itself available and accessible during the 5 consecutive calendar day period in the event that the FAA decides to conduct a full inspection reexamination to determine whether the certificate holder remains properly and adequately equipped and able to conduct a safe operation.

No, as long as the notification occurs at least 5 consecutive calendar days before the flight in order to provide sufficient time for inspection by FAA, as per the regulation. Under this scenario, the prior notification is not invalid. The preamble to the Notice of Proposed Rulemaking for 14 CFR § 119.63 states:

> Unless the FAA suspends or revokes the operator's certificate or withdraws the authorization in the operations specification for that kind of operation, the certificate holder may resume that kind of operation on the sixth consecutive calendar day after it notified the FAA of its plans to resume that kind of operation. Even if the FAA decides not to conduct a reinspection or a reexamination during that 5-consecutive-calendar-day period, the certificate holder may nonetheless resume operations on the sixth consecutive calendar day after the notification.[2]

3) *If an operator advises the Administrator 30 consecutive calendar days prior to resuming operations of its intent to resume operations, and then conducts an operation on or after the 6th calendar day after advising the Administrator, is that compliant with 14 CFR § 119.63(b)?*

The answer is yes, consistent with the above discussion ("*may* resume . . . on the sixth calendar day"), as long as the notice occurs at least 5 calendar days before the occurrence of the operation in order to allow for inspection. However, after giving the initial notice, not more than 90 days should lapse before the operation occurs, in order for the operator to comply with the recency requirements of § 119.63(a)(2).

4) *Given the scope and depth of an Airman Competency/Proficiency Check conducted by the Administrator, would such a flight qualify as a 'kind of operation for which the [certificate holder] holds authority' and apply towards the 90 days recency rule?*

Yes, an Airman Competency/Proficiency Check under 14 CFR §§ 135.293(a), 135.293(b), and 135.299 can qualify as the kind of operation which would count towards the 90 days recency rule in § 119.63(a). As discussed in your analysis, it is equivalent to having performed the kind of operation for which you hold authority, and the skills displayed are equal to those that would be performed during that kind of operation.

We appreciate your patience and trust that the above responds to your inquiry. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Courtney Freeman, an attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of the Flight Standards Service.

Sincerely,

Lorelei Peter
Assistant Chief Counsel for Regulations

[2] Commuter Operations and General Certification and Operations Requirements, 60 FR 16230-01.

CIVIC HELICOPTERS

December 15, 2015

Lorelei A. Peter, Assistant Chief Counsel (Acting)
Federal Aviation Administration – Office of the Chief Counsel
800 Independence Avenue SW
Washington, DC 20591 Via U.S. Certified Mail

Re: Request for legal interpretation of 14 CFR Part 119.63

Dear Ms. Peter,

I was recently approved as the single pilot for Civic Helicopters' Single Pilot Part 135 Air Carrier Certificate, DCQA715B. Upon signing of my OpSpecs on December 4, 2015, the POI for my certificate, Christopher Thomas, reminded me of 14 CFR Part 119.63 – Recency of Operation. I am writing today for a legal interpretation of what constitutes compliance with 14 CFR Part 119.63(b).

Background on first set of questions

On December 4, 2015, I presented my POI with the following scenario: If I were to advise my POI today (12/4/2015) of a flight on December 9th, and that flight were to be canceled or rescheduled, would the notice given on 12/4/2015 apply to a flight later in the month, say on the 24th… i.e. 12/4/2015 is at least 5 calendar days before 12/24/2015, which I thought would meet the requirement that the certificate holder "advises the Administrator at least 5 consecutive calendar days before resumption of that kind of operation." During the meeting, Mr. Thomas read Part 119.63 out loud a couple of times to me with emphasis on the words "does not conduct a kind of operation," which I take to mean that he believed the notice on 12/4/2015 would not adequately comply with 14 CFR 119.63 in this instance.

To clarify the same question, I gave a scenario in which a flight is scheduled then canceled due to weather, then rescheduled. I asked why notice given 5 days before the first scheduled flight, i.e. a kind of operation for which I am authorized, would not apply to the rescheduled flight. Mr. Thomas replied by reading 119.63(b) out loud again, with instructions to put my question in an email to him and his supervisor. Subsequently, I sent notification to advise my POI of intent to resume operations on December 7th with the following content:

> "[P]lease accept this email as notice per 14 CFR Part 119.63(b)(1) that I intend to resume our on-demand Part 135 operations on Sunday, December 13th and anticipate being asked to conduct an operation during this month. I submit this as notice "at least 5 calendars" prior to our intent to resume operations. I asked during our December 4th meeting whether the notice I would provide now, advising my intent to resume operations would apply to operations conducted later in December. You responded by reading 14 CFR 119.63(b) out loud and stated that you are not there to impose your own

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interpretation on the FARs. The question is this: Does my notice, today, fulfill the requirements of 14 CFR 119.63(b) for any operations conducted in the month of December? Or, would you like to receive an email every time I give a quote for a Part 135 Operation up until one actually happens?"

On December 8, 2015, my POI replied with:

"Your notice of resumption of operations in accordance with 14 CFR section 119.63 requires more detail and at a minimum shall include the time of the flight, origin, destination, and nature of the flight. As the rule states, Civic Helicopters will be required to provide the 5-day notification until it has conducted an authorized 14 CFR Part 135 flight. If this flight is canceled, the requirement will remain in effect."

My understanding is that my POI and his Frontline Manager, Mr. William D. Sapp, concur that advising the Administrator at least 5 consecutive calendar days before resumption of that kind of operation (Part 135 operation) would require a specific reference as to "time of the flight, origin, destination, and nature of the flight," and any change from the details provided in the advice/notice to the FAA would constitute a violation of 14 CFR 119.63(b).

Here are my questions:

- **Does a certificate holder have to provide "time of the flight, origin, destination, and nature of the flight" in order to comply with 14 CFR Part 119.63(b)?**
- **Assuming I did provide "time of the flight, origin, destination, and nature of the flight," would a subsequent change in the customer's request (i.e. time, date, destination, etc.) render the prior notification invalid and would conducting such a flight constitute a violation of 14 CFR 119.63?**
- **If an operator advises the Administrator 30 consecutive calendar days prior to resuming operations of its intent to resume operations, and then conducts an operation on or after the 6th calendar day after advising the Administrator, is that compliant with 14 CFR 119.63(b)?**

Analysis

1. 14 CFR 119.63 does not state the notice shall include the time of the flight, origin, destination, and nature of the flight. In our 12/4/2015 meeting with our POI, we asked about a scenario where the "time of the flight, origin, destination, and nature of the flight" were identical, yet merely rescheduled to a later date. The statement that "If this flight is canceled, the requirement will remain in effect" suggests that notice is *unique to a date* and as such, the original notice for the flight does not meet the standard of advising the Administrator at least 5 consecutive calendar days before resumption of that kind of operation. Per this interpretation of the regulations, it would suggest that if there were any variation in the time of flight, origin, destination, and/or nature of the flight, from the notice that is given to advise the Administrator, then this would mean any variation would require a new 5-days notice, and render conduct of a flight with any variation in time/origin/date/ destination from the original notice to the Administrator a violation of 14 CFR Part 119.63. For example, if notice was given on December 4th for a flight on December 9th, then no additional notices were given in the meantime between December 5th and 9th, and then the flight scheduled for the 9th was rescheduled to December 10th, doing the flight would be a violation of 14 CFR 119.63 because there was no notification

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on December 5th of doing the flight on the 10th, and no flight had been conducted in the last 90 days.

The Frontline Manager stated in an email "If for some reason you do not go, then you still have not conducted an operation in the preceding 90 days. Once you have performed an operation, you will not need to provide further notice. To keep this simple, if you have provided notice and that flight gets cancelled, then advise this office when the next flight is scheduled. The request to provide specific details regarding the location of the flight and departure time is so that surveillance can be conducted. This is not an unreasonable request from your POI." If the legal regulatory standard is 5 days notice with unique parameters of time of day, destination, etc. then a flight that was delayed by a single day would not be possible, unless the FSDO considers revised notice of possibly less than 24 hrs. acceptable, which, in my opinion, would then just be subject to personal interpretation by the ASI or Frontline Manager. When a statement like when "that flight gets cancelled, then advise this office when the next flight is scheduled," is followed with a statement of "if your POI is incorrect in his advice concerning a regulation, it does not negate your responsibility to comply," I take it upon myself to question how the interpretation of 5 consecutive calendar days is being applied.

To comply with a 5 calendar days notice, an operator that has not met the recency requirement of 119.63(a) would have to give notice daily and anticipate any possible variation in "time of the flight, origin, destination, and nature of the flight." While it is 'reasonable' for the POI to request this information in order to conduct surveillance, the standard for compliance is unclear. When this clarification is sought, the Frontline Manager's line of reasoning was "Once you have performed an operation, you will not need to provide further notice." However, my very question is how does an operator compliantly do an operation when notice is interpreted to be bound by date, time of day, destination, nature of flight, etc.?

2. The nature of an on demand business makes it difficult to predict the specific parameters of a customer's short notice request. This would place an operator that is past their 90 days currency in a predicament where they are unable to take jobs to get 'current' or 'recent' due to the changing needs of the customer, especially if they are required to predict 5 days ahead of time what a customer may want. In an effort to comply with my POI and Frontline Manager's instructions, I have begun to send a daily notice with a range of mission profiles, e.g. "I plan on doing a flight from CRQ to fly over down town San Diego and back on December 20, 2015 with duration of approximately an hour anytime between 9am and 6pm. The nature of the flight will be a tour. Alternatively, I may conduct a flight from CRQ to LAX, with duration of approximately 2 hours, anytime between 9am and 6pm. The nature of the flight would be a passenger drop-off. Alternatively, I may conduct a flight from CRQ to SMO, with duration of approximately 2 hours, any time between 9am and 6pm. The nature of the flight would be a passenger drop-off. Alternatively, I may conduct a flight from CRQ to HHR, with duration of approximately 2 hours, any time between 9am and 6pm. The nature of the flight would be a passenger drop-off."

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I have not received feedback from my POI or his Frontline Manager on whether they accept such notice for 14 CFR 119.63, however, I am anticipating an objection to this type of notice as it does not specify a single, specific time of day for the flight. Due to the fact that it is wintertime and the weather does affect safety of flight decisions, I would argue that there should be some degree of flexibility in the scope of the notice, and an operator should be referred back to the original language of 14 CFR 119.63 and any notice given 5 calendar days before the flight that gives them 'recency of operation,' should suffice under 14 CFR 119.63.

3. Finally, I understand that if one takes a strict reading of 14 CFR 119.63(b) and assumes that any notice that is given at least 5 calendar days prior to resuming operations under Part 135, and no operations occur to give the operator 'recency' of operations, then a question of when that notification 'expires' becomes an issue. For instance, if notice is given on December 4th, and no operations happen on December 9th, or even in the entire month of December, when would the advice given on December 4th 'expire?' Arguably, notice given on December 4th is more than 5 calendar days before any date from December 9th onwards.

   In anticipation of such an objection, I offered notice for the end of the calendar month, i.e. I advised the POI on 12/7/2015 that I intend to conduct an operation on or by 12/31/2015, and stated that I was available for inspection/surveillance anytime between 12/7/2015 and 12/31/2015, and that if I were to conduct an operation prior to 12/31/2015 it would be after 12/12/2015. I suggested that this type of notice would comply with the language of 14 CFR 119.63, put a reasonable 'expiration date' on the notice, and give the POI a longer period over which he could conduct surveillance. In fact, my POI, who also is the POI for our other certificates, has been here twice this month to conduct inspections and surveillance of my certificates, which I would imagine presents them with sufficient opportunities to conduct surveillance, per the intent of the Frontline Manager. Despite this line of reasoning, the POI and Frontline Manager rejected this notice as not specific enough with regard to time of day of the flight, and implicitly non-compliant if the date of the flight occurred prior to 12/31/2015.

Background on second set of questions

On November 18th I was given an Airman Competency/Proficiency Check under 14 CFR Parts 135.293(a), 135.293(b), and 135.299. I satisfied the requirements of the check and was given an Approval. An overview of the guidance in FSIMS 8900.1 Vol. 6, Ch. 2, Sec. 13 for an ASI conducting the Airman Competency/Proficiency Check is quoted here: "Airman Competency. This inspection area applies to the knowledge, ability, and proficiency of the airman receiving the check. An airman must perform specific events in an aircraft, an aircraft simulator, a flight training device, or a combination thereof, during a proficiency or competency check. Through observation of the check ride, the inspector can determine if the airman has an acceptable level of aircraft systems knowledge and is competent in the performance of normal, abnormal, and emergency flight procedures. In addition, the inspector can observe whether the airman complies with company policy, possesses current manuals, and possesses appropriate certificates and ratings."

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When my predecessor received annual checkrides for this Part 135 certificate, his POI used to include the checkride as an event or operation that qualified for recency of operations under 14 CFR 119.63. This was because the checkride required my predecessor to demonstrate knowledge and competency under 135.293(a)-(b) to conduct operations under Part 135, and the content of the competency check was broader and deeper in scope than performance of a typical operation. Furthermore, Part 135.299 requires that the competency check "Consist of at least one flight over one route segment; and Include takeoffs and landings at one or more representative airports."

Question: Given the scope and depth of an Airman Competency/Proficiency Check conducted by the Administrator, would such a flight qualify as a 'kind of operation for which [the certificate holder] holds authority' and apply towards the 90 days recency rule?

Analysis

The flight portion of my competency check was presented to me as a passenger carrying scenario to an airport that I would conduct operations to, during which I was required to demonstrate a passenger briefing, a range of procedures including normal, abnormal and emergency flight procedures, plus knowledge of company policies and my statement of compliance. The *entire* flight was conducted without the inspector (ASI) taking the flight controls at any point, however dual flight controls were left in the aircraft. Since the competency check was broader and deeper in scope than a normal Part 135 operation would have been, I would argue that it is essentially equivalent to having conducted a kind of operation for which I hold authority, only without the revenue.

The similarities between 14 CFR 119.63 – Recency of operations and 14 CFR 61.57 – Recent flight experience: Pilot in command lead me to believe that the intent of the regulations is for the pilot to have relevant, recent experience within the last 90 days. Under Part 61.57 and 61.56, a practical test or proficiency check would fulfill the recency requirement under either part. Given the similarities between the regulations, have there been any legal interpretations that include or exclude the competency/proficiency check as an operation that fulfills the recency of experience requirement?

I respectfully request a legal interpretation to resolve the questions raised in this letter. As a Single Pilot Part 135 certificate holder, I am the only one authorized to operate and fulfill the recency of operations requirement. As an owner/operator of Civic Helicopters, Inc., I typically spend approximately 3 months of every year conducting business development overseas. The question of recency of experience will re-occur annually and I seek answers to help me comply with the regulations in an efficient manner. I understand that the typical time for a legal interpretation is ~120 days and look forward to the response.

Best regards,

Candise Tu
Vice President, Civic Helicopters, Inc.

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