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

Office of the Chief Counsel

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

JAN 2 6 2017

Mr. David W. Brown
[redacted]

Re: Applicability of the 14 CFR § 119.73 employment restriction to check pilots

Dear Mr. Brown:

This letter is in response to your June 2, 2016 request for a legal interpretation on the applicability of 14 CFR § 119.73 to a "check pilot." Specifically, you asked if a check pilot, who was formerly a "POI" for a part 135 certificate holder, would be considered to be an agent or representative of the certificate holder and therefore restricted from employment as described in § 119.73.

Section 119.73(a) prohibits a part 121 or part 135 certificate holder from knowingly employing or making a contractual arrangement which permits an individual to act as an agent or representative of the certificate holder in any matter before the Federal Aviation Administration (FAA) if the individual, in the preceding two years: (1) served as, or was directly responsible for the oversight of, an FAA Flight Standards Service aviation safety inspector; and (2) had direct responsibility to inspect, or oversee the inspection of, the operations of the certificate holder.

As an initial matter, we note that § 119.73(a) would cover former principal operations inspectors ("POI") because a POI is an FAA aviation safety inspector with direct responsibility to inspect the operations of a specific certificate holder. Section 119.73 would, therefore, prohibit that certificate holder from hiring a POI who, in the preceding two years, had oversight over the certificate holder's operations to serve as an agent or representative of the certificate holder in matters before the FAA.

The question then is whether a former POI who is subsequently employed as a check pilot for the certificate holder acts as an agent or representative of the certificate holder in any matter before the FAA. An individual is considered to be "acting as an agent or representative" in a matter if the individual makes any written or oral communication on behalf of the certificate holder to the FAA. *See* 14 CFR § 119.73(b).

As explained in the preamble to the proposed rule on § 119.73, there are numerous positions that would typically not require representing an operator to the FAA, but would

take advantage of the unique skill set that a former aviation safety inspector would possess. As long as the employee did not act as an agent or representative of the operator before the FAA, the employee would be able to provide highly beneficial expertise and enhance safety in areas such as safety management systems, operational training programs, crewmember training programs, maintenance training programs, operational control systems, and regulatory compliance, among others. *See* 74 FR at 60221. Accordingly, the preamble to the final rule states that § 119.73 does not prohibit a former FAA employee from being hired for positions such as a pilot, flight attendant, mechanic, training instructor, etc., for an operation for which the employee formally had oversight, as long as the former FAA employee does not represent the operator to the FAA. *See* 76 FR at 52232.

Although the position of "check pilot" is not specifically mentioned in the final rule, employment in that capacity would similarly not be prohibited under § 119.73. A check pilot is an airman approved by the FAA who has the appropriate knowledge, training, experience, and demonstrated ability to evaluate and certify the knowledge and skills of other pilots. The role of the check pilot is to ensure that the flightcrew member has met competency standards before the check pilot releases the flightcrew member from training and to ensure that the flightcrew member maintains those standards. *See* FAA Order 8900.1, Vol. 3, Ch. 20, § 5, para. 3-20-5-7 and -9; *see also* 14 CFR § 135.337. The responsibilities of a check pilot would not ordinarily entail serving as an agent or representative of the operator, such as making oral or written communications on behalf of the certificate holder, in matters before the FAA. Thus, § 119.73 does not prohibit a former POI from being hired as a check pilot by the part 135 certificate holder over which the POI had oversight, so long as the check pilot does not represent the certificate holder in any matter before the FAA.

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This letter has been prepared by Richard Doan, Operations Law Branch, Office of the Chief Counsel and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,



Lorelei Peter
Assistant Chief Counsel for Regulations, AGC-200

DAVID W. BROWN

PHONE: [redacted]

[redacted]

email: [redacted]

June 2, 2016

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Washington, D.C. 20591

I would like an interpretation of 14 CFR Part 119.73.

Specifically, would a check pilot, who was formerly a POI for a Part 135 Certificate Holder, be considered to be an agent or representative of the certificate holder?

> **§119.73 Employment of former FAA employees.**
>
> (a) Except as specified in paragraph (c) of this section, no certificate holder conducting operations under part 121 or 135 of this chapter may knowingly employ or make a contractual arrangement which permits an individual to act as **an agent or representative of the certificate holder** in any matter before the Federal Aviation Administration if the individual, in the preceding 2 years—
>
> (1) Served as, or was directly responsible for the oversight of, a Flight Standards Service aviation safety inspector; and
>
> (2) Had direct responsibility to inspect, or oversee the inspection of, the operations of the certificate holder.
>
> (b) For the purpose of this section, an **individual shall be considered to be acting as an agent or representative of a certificate holder in a matter before the agency if the individual makes any written or oral communication on behalf of the certificate holder to the agency** (or any of its officers or employees) in connection with a particular matter, whether or not involving a specific party and without regard to whether the individual has participated in, or had responsibility for, the particular matter while serving as a Flight Standards Service aviation safety inspector.
>
> (c) The provisions of this section do not prohibit a certificate holder from knowingly employing or making a contractual arrangement which permits an individual to act as an agent or representative of the certificate holder in any matter before the Federal Aviation Administration if the individual was employed by the certificate holder before October 21, 2011.

Thank you for your time.

Sincerely,

David W. Brown