

CLIENT ALERT

Summary of FAA's COVID-19-Related Measures Affecting General Aviation and Part 135 Operators and Related Considerations

Apr. 14, 2020

The FAA announced several measures to provide COVID-19 related-relief for general aviation and Part 135 operators and enable many operators to continue flying during the global pandemic. These measures include:

- A general “enforcement holiday” from actions against flight crewmembers (including those operating under Parts 91 and 135) with expired medical certificates until June 30, 2020.
- An exemption extending the validity of medical certificates for Part 135 commercial flight crewmembers operating internationally until June 30, 2020.
- Exemptions for some Part 135 operators from requirements for certain recurrent training and qualification activities.

The FAA could reevaluate the parameters and durations of the above measures as the pandemic unfolds, so operators should be prepared to adjust their internal policies to conform to shifting FAA requirements, possibly with little notice. Operators should also carefully review their insurance policies before relying on any FAA-issued policies related to COVID-19. The FAA is expected to expand relief for Part 135 and general aviation pilots and operators in the form of a Special Federal Aviation Regulation (SFAR) released in the next two weeks. The SFAR is expected to provide extensions for a number of recurring regulatory requirements and to address issues raised by industry trade associations, including:

- Extensions of 14 CFR Part 61 pilot currency requirements, *e.g.*, flight review, instrument proficiency checks, pilot in command/second pilot in command proficiency checks.
- Guidance that 709 reexaminations or paperwork inspections in person (such as logbook inspections under 14 CFR 61.51, or maintenance record inspections under 14 CFR 91.417) be held off or at least conducted electronically during the current social distancing protocols and directives regarding non-essential activities.
- Extensions for certified flight instructor certificate renewal, expiration, and endorsement periods.
- Extension of knowledge examination expiration periods.
- Extension for filing documents under 14 CFR Part 13 (Subparts C, D, and G) (FAA civil action penalties and hearings).
- Extensions for certain aircraft maintenance and continuing airworthiness requirements with necessary mitigation procedures.

Medical Certificate Expiration - Non-Enforcement Policy

The FAA announced that it will not take legal enforcement action against flight crew members who fail to renew medical certificates expiring between March 31, 2020, and June 30, 2020. The rules prohibiting operations during a medical deficiency are unchanged by the policy. The announcement notes that, given the current state of the COVID-19 pandemic, FAA medical examinations are nonemergency medical services that could place a burden on the U.S. healthcare system and increase the

transmission of coronavirus. In issuing the policy, FAA has effectively determined that flight crewmembers with medical certificates expiring during the effective period may operate beyond the validity period of their medical certificates without creating a risk to aviation safety that is unacceptable under these unique circumstances.

This “enforcement holiday” provides some relief to flight crewmembers who are unable to timely obtain an FAA medical exam in the current environment and to the flight departments that depend on those personnel for continuity of operations. However there are some glaring limits, raising questions about whether the policy provides full, realistic relief to those who are unable to obtain an FAA medical exam. The accommodation applies only to flights within the U.S. and to holders of certificates that will expire during the effective period; it does not apply to holders of medical certificates that expired prior to March 31, 2020, and it does not currently commit FAA to withholding enforcement action against certificates that expire after June 30, 2020.

This non-enforcement policy does not apply to flight crewmembers serving on international flights. The FAA issued a separate exemption that extends the duration of expiring medical certificates until June 30, 2020 for pilots who conduct Part 135 operations outside the U.S. This exemption is addressed in greater detail below.

Before relying on the non-enforcement policy or the exemptions described below, the aviation insurance policy should be carefully reviewed to ensure the relief provided by the FAA does not violate the policy requirements. The insurance implications are described in more detail below.

Medical Certificate Exemption for International Part 135 Operators

On March 30, 2020, the FAA released an exemption that extends the duration of medical certificates expiring between March 31, 2020 and May 31, 2020, until June 30, 2020, for pilots who conduct Part 135 operations outside the U.S. In order to qualify for the exemption, employers must submit a Letter of Intent listing the individual pilots who will be exercising the exemption, provide certain safety-related information to their FAA inspectors, and the pilots exercising the exemption must carry a copy of the exemption on the aircraft during flights outside the U.S. Unlike the broader “enforcement holiday” provided under the general policy, the exemption effectively renders would-be expired certificates valid.

Training Exemptions

The FAA has issued four exemptions on Part 135 training in effect through March 31, 2020, which are applicable to most Part 135 operators:

- [FAA-2020-0291](#), exempting Part 135 operators from the requirement that crew members don protective breathing equipment or oxygen masks during recurrent and upgrade training and testing;
- [FAA-2020-0292](#), permitting Part 135 ground personnel and crewmembers to complete recurrent training and qualification activities up to three calendar months after the month that the activity was due to have been completed, for requirements that were due to be completed through May 31, 2020;
- [FAA-2020-0307](#), exempting Part 119 certificate holders, including some Part 135 operations, from the requirement that crewmembers don protective breathing equipment or oxygen masks during recurrent and upgrade training and evaluation; and

- [FAA-2020-0308](#), allowing Part 135 certificate holders, including some Part 135 operations, to permit personnel, crewmembers, and dispatchers to complete recurrent training and qualification activities up to three calendar months after the month that the activity was due to have been completed, for requirements that were due to be completed though May 31, 2020.

All operators seeking relief under any of the above training-related exemptions must submit a Letter of Intent to FAA, obtain Operations Specification A005 from their FAA inspector, and follow the other conditions and limitations outlined in the specific exemption.

Insurance Considerations

The fact that the FAA is willing to provide relief does not mean an operator's insurer is willing to allow the operator to rely on that relief from otherwise applicable requirements, if the operator's doing so conflicts with the terms of its aviation insurance policy. Therefore, before relying on the FAA-issued COVID-19 related policies, exemptions, and guidelines, it is strongly recommended that operators carefully review their aviation insurance.

Due to differences in each insurer's policy language, operators should review the language in their policy with their brokers or other aviation professionals. Among other things, the policy requirements for pilots (*e.g.*, whether specific pilots are named and/or the insurer must approve other pilots, whether and what medical certification is included, training type and frequency, experience, etc.) as well as any policy exclusions that may be triggered should be considered. For example, if the policy requires a valid medical certificate, the FAA's decision not take enforcement action against a pilot solely because he/she was flying with a medical certificate that expired during the FAA-specified period does not meet the standard of a valid medical certificate. Similarly, if the policy requires annual training, the FAA's extension of the period does not extend the period in the policy. Thus, if the operator takes advantage of the FAA relief and doing so is inconsistent with the policy requirements, the insurer could deny coverage in the event of a claim.

Following that initial review, it is recommended that operators, together with their brokers, contact their underwriters to advise them of their plans and the degree to which they would rely upon the FAA relief. This provides an opportunity for the underwriter to advise whether the policy in its current form permits reliance on the FAA relief and, if not, whether another workaround is available. It may also be necessary and appropriate for the operator to discuss insurance considerations with their broker or other aviation professional. If a workaround is agreed upon, it should be appropriately memorialized by the operator and the underwriter. It is also important to ensure the accuracy of any pilot applications that are submitted to the insurer if FAA COVID-19 relief is being relied upon.

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