Mr. Rowhuff
Board Member National EMS
Pilots Association
Midwest Corporate Aviation
Wichita, Kansas 67208-0067

June 7, 1990

Dear Mr. Rowhuff:

Thank you for your letter of April 11, 1989, concerning the Federal Aviation Regulations (FAR) that control Emergency Medical Service (EMS) flights and the status of medical personnel who are carried on those flights. Your examples and questions are set forth below, and each question is followed by our interpretation of the FAR. We regret that we could not answer your letter more promptly.

Example #1:

"An aircraft is owned and operated by a hospital who has a Part 135 certificate. All personnel, pilot and medical personnel, are employees of the hospital."

Question #1 of Example #1:

"Is it a Part 135 or Part 91 flight when there is no patient on board the aircraft?"

Answer to Question #1 of Example #1:

When an aircraft is owned by a hospital and all the people, which are carried aboard that aircraft during a particular flight (i.e., pilot and medical personnel), are employees of that hospital (a patient is not in the aircraft), a flight could be conducted under Part 91 of the FAR. However, we must caution that if a Part 91 flight is assigned by a Part 135 certificate holder, and the Part 91 flight precedes a Part 135 flight, which is also assigned by the certificate holder, then the flight time of the Part 91 flight is considered "other commercial flying". The flight time in "other commercial flying" must be counted against the daily flight time limitations under Part 135. If the Part 91 flight occurs after the Part 135 flight, the flight time of the Part 91 is not counted against the daily flight time limitations of Part 135, but will be counted against the pilot's monthly, quarterly, and early flight time limitations. Additionally, the Part 91 flight may affect the availability of the crew for a subsequent Part 135 flight, because the general rule is that a Part 91 flight may not be conducted during a required rest period if that flight is assigned by the certificate holder.

Example #2:

The aircraft is owned and operated by a Part 135 certificate holder under a contract to a hospital or hospitals. The pilots are employees of the certificate holder. The medical personnel are employees of the hospital.

Question #1 of Example #2:

*Is it a Part 135 *or* Part 91 flight when there is *no* patient on board the aircraft?"

Answer to Question #1 of Example #2,:

The answer to your question depends on whether the medical personnel are crewmembers or passengers during that flight. Part 1.1 of the FAR defines a crewmember as "[A] person assigned to perform duty in an aircraft during flight time. Therefore, before medical personnel can be classified as crewmembers, they must be assigned a duty by the certificate holder and that duty must be in an aircraft during flight time. Whether the medical personnel are assigned duty by the certificate holder and whether that duty is in an aircraft during flight time must be determined from the specific facts. Your letter does not provide those specific facts. However, if the medical personnel are not crewmembers according to the definition of Part 1.1 of the FAR, they would be passengers, and the flight must be conducted under Part 135 of the FAR if the certificate holder is receiving any compensation or benefit from the carriage.

Sincerely,

Donald P. Byrne
Acting Assistant Chief Counsel
Regulations and Enforcement Division