May 27, 2005

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RE: Charity Flight Operations Concept

We received your letter requesting guidance and interpretation of the Federal Aviation Regulations governing Life Flight[s] operations. The facts, as outlined in your letter, are as follows:

A charitable organization proposes to provide free medical benefit flights for financially needy patients. The charity would use volunteer pilots to conduct the flights and third parties would donate money to the charity to cover flight expenses. The pilots would log the flight hours, but would not take a tax deduction for the donated time. The aircraft would either be co-owned with or dry leased from a separate company, and the owners of the separate company would be allowed to use the aircraft for personal travel at their own expense when the aircraft is not being flown on charity flights. Based on the arrangement described above, you asked whether the charity could operate under part 91.[2]

The charity cannot operate under part 91 because the arrangement would constitute a commercial operation for which a part 119 certificate is required. Section 1.1 of the Federal Aviation Regulations defines a commercial operator as a person who, for compensation or hire, engages in the carriage by aircraft in air commerce of persons or property.

"Life Flight" refers to pilots or organizations that conduct flights characterized as "volunteer, "charity," or "humanitarian." These flights are referred to by numerous generic names, including "lifeline flights," "life flights," "mercy flights," and "angel flights."

[2] The petitioner also asked other questions regarding cost sharing and maintenance requirements under part 91. The FAA did not reach these issues because it determined that the proposed operations could not be conducted under part 91.

Where it is doubtful that an operation is for compensation or hire, the test applied is whether the carriage by air is merely incidental to the person's other business or is, in itself, a major enterprise for profit.

The FAA construes "compensation or hire" very broadly. It does not require a profit, a profit motive or the actual payment of funds. Instead, compensation under the FAA's view, is the receipt of *anything of value.* Thus, compensation for the flights as proposed would exist in two forms. First, the expenses associated with the flight would be paid by donors to the charity, not the individual pilot; and second, the pilots would acquire flight hours at the charity's expense -- flight hours that could be used to demonstrate aeronautical experience eligibility for an airman certificate.[3] These forms of compensation are sufficient to require the operator to have a part 119 certificate.

In addition to the problems cited above related to compensation or hire, the FAA specifically notes that the proposed ownership and operating arrangement is akin to a flight department company. According to your letter, the aircraft would either be co-owned with, or dry leased from, a separate company that is owned by one of the pilots. If the aircraft was owned and operated by an entity that had no business purpose other than owning and operating the aircraft, that arrangement would constitute what many refer to as a "flight department company." The FAA has previously stated that a company organized solely for the purpose of owning and operating aircraft to transport people or property for compensation or hire must have an air carrier operating certificate because the air transportation provided by the company is not "incidental" to the company's business.[4] Moreover, even if the pilot dry leased the aircraft from a separate company that he co-owned, it could be argued that the leasing arrangement is not a true dry lease because the company providing the aircraft is owned (at least in part) by the pilot. Thus, the practical effect is that the aircraft and crew used in the air transportation are both provided by the same company, which is effectively a flight department company operation that cannot be conducted under part 91.[5]

Alternatively, the issue regarding prohibited uncertificated flight department companies would be resolved as to the company if the pilot dry leased the aircraft from a company that was truly separate, i.e. a company he did not own or co-own. Nevertheless, a part 119 certificate would still be required for the pilot because, as explained above, the pilot would be providing air transportation and receiving "compensation" in the form of donations for the costs of the flights and the accrual of flight hours at the charity's expense.

[3] ~~*See* FAA Interpretation 1987-14. *See*~~

FAA Interpretation 1989-22.

[5] *See e.g.,* U.S. v. Bradley, 252 F.Supp. 804 (S.D. Tex. 1966); Aircrane Inc. v. Butterfield, 369 F.Supp. 598 (1974).

The FAA wishes to clarify that the proposed operations are distinguishable from the FAA charitable airlift exception. Under that exception, flights conducted by private pilots and offered to the public by a charitable organization in exchange for donations may be operated under part 91 if they do not involve the point-to-point transportation of persons or property, which would implicate the requirements of part 119.[6] For example, under the charitable airlift exception, the passengers are flown around for a brief period of time, and then returned to the point of origin; whereas with your proposal, the passengers would be flown from point A to point B. Since the flights would involve point-to-point transportation for compensation, a part 119 certificate is required.

Your letter also stated that current flights for patients of charitable Life Flight organizations are conducted under part 91, but again, these types of flights are distinguishable from your proposed operations. It is true that some Life Flight organizations are permitted to operate under part 91, and are allowed to accept donations from the public. However, these organizations use the services of pilots who donate their time and pay the flight expenses out of their own personal resources. In addition, the public donations made to these organizations are not used, as you propose, to reimburse pilots for flight expenses, but instead are used to cover the administrative costs associated with the passengers' medical care, such as providing on-board medical equipment and other medical necessities. Life Flight pilots are not permitted to accept any money (or other form of compensation) from a charity, the public or the patient. Therefore, the flights are not being conducted for compensation, and are not required to comply with part 119.

Finally, you questioned whether pilots could log flight time and take a tax deduction for charitable flights. If the pilots conduct the flights as described above (i.e. donating their time and using their personal resources to pay all flight expenses), they would be allowed to log the flight time because it was incurred at their own expense (not at the expense of a charitable organization that paid some or all of the costs of the flights). Moreover, the pilots may be eligible for a tax deduction in connection with the flights. Although a charitable tax deduction is considered to be a form of compensation for pilots, the FAA, in 1993, issued an enforcement policy stating that:

> "Since Congress has specifically provided for the tax deductibility of some costs of charitable acts, the FAA will not treat charitable deduction of such costs, standing alone, as constituting "compensation or hire" for the purpose of enforcing [the Federal Aviation Regulations]." If taking a charitable tax deduction for transporting persons or property is coupled with any reimbursement of expenses, or other compensation of any kind, then this policy does not apply. *See* FAA Order 8400.10, Vol. 4, Chap. 5, § 1, ¶ 1345 (1994).

The humanitarian efforts of many individuals in the aviation community are laudable, yet the need to maintain the highest level of safety for commercial operations remains. Accordingly, the FAA believes that the interests of safety are best served by requiring operations conducted for

e See FAA Interpretation 1990-41. *See also 14* C.F.R. § 61.113(d).

compensation or hire to be conducted under parts 121 or 135 of the Federal Aviation Regulations.

We trust that the foregoing interpretation is responsive to your inquiry. This interpretation was prepared by the Operations Law Branch of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of the Flight Standards Service. Please contact us if we can be of further assistance.