Federal Aviation Administration

Memorandum

Date: SEP 28 2009

To: Gayle Fuller, Managing Attorney, ASO-7

From: Rebecca B. MacPherson, Assistant Chief Counsel for Regulations, AGC-200

Prepared by: Karen Petronis, Senior Attorney, AGC-200

Subject: Request for Interpretation by Drug Enforcement Administration

Thank you for your request for interpretation dated June 18, 2009, which forwarded a request made by Drug Enforcement Administration (DEA) agent Frazier Moreman to the Atlanta Flight Standards District Office (FSDO).

The transmittal from Theresa Dunn included her research that found an error in FAA materials regarding public aircraft definitions and substantive law. We are aware of these problems, and are participating in the agency efforts to update the guidance material on public aircraft definitions and operations.

The underlying request in the email string from the DEA to the Atlanta FSDO was a bit difficult to parse out, but appears to ask whether it is a public aircraft operation if the DEA gives the state of Georgia money to use the state's aircraft to effectuate marijuana eradication. The original request included identification of the aircraft as surplus military OH-58 helicopters, questioning whether §91.313 applied or if there was an exemption for surplus military aircraft. In the email string within the agency, there were some interim findings and questions concerning the airworthiness certification of the aircraft in question as well as their status as public aircraft.

The same question was asked by the DEA in 1998, and a copy of our legal interpretation issued October 8, 1998 is attached. At that time, based on the funding arrangements described by the DEA, such operations were found to be for commercial purposes, and were considered civil aircraft operations subject to the regulations in 14 CFR. In the email from Mr. Moreman, he clearly indicates that that the DEA would be paying the state of Georgia for "blade time." The criteria used in our 1998 determination included whether the DEA grant money was either required or envisioned to be used for aircraft operations. Nothing in Mr. Moreman's emails indicate that the circumstances of reimbursement have changed, and our 1998 interpretation stands that it is not a public aircraft operation.

We trust that this interpretation responds to the various questions raised in your transmittal. If you have any questions, please contact my staff at 202-267-3073. This response was prepared by Karen Petronis, Senior Attorney for Regulations in my office. Any questions regarding public aircraft operations may be directed to her.

Attachment

OCT - 8 1998

Carol J. Harrison
Attn: DOL
Drug Enforcement Administration
700 Army-Navy Drive
Arlington, Virginia 22202

Dear Ms. Harrison:

This responds to your request for the Federal Aviation Administration's (FAA) position regarding the status of aircraft operations by state or local governments to conduct drug interdiction efforts pursuant to grants from the Drug Enforcement Administration (DEA). This letter supersedes the FAA's April 2, 1998, letter to Mr. Thomas Stafford of the DEA's office in Nashville, Tennessee, that addresses this matter.

Generally, when a federal agency reimburses a state agency for conducting aircraft operations on its behalf, the aircraft operation is considered to be "for commercial purposes." Unless the federal agency certifies that the operation was necessary to respond to a significant and imminent threat to life or property and that no service by a private operator was reasonably available to meet the threat, the aircraft operation would be a civil aircraft operation. Advisory Circular No. 00- 1. 1, Government Aircraft Operations, at Chapter 1, paragraph 2.a.(2). In the case of a federal agency grant to a state agency, the operation of an aircraft to carry out the purpose for the grant is considered to be "for commercial purposes," if either the grant specifies that the money is, at least in part, for aircraft purposes, or the nature of the grant clearly requires or envisions the money being spent for aircraft operations. Unless the federal agency makes the required certifications stated above, such an aircraft operation would be a civil aircraft operation.

It is our understanding that DEA grants to state agencies anticipate that grant money will be used to fund aircraft fuel and aircraft maintenance. Additionally, given the nature of certain illegal drug activity, e.g., marijuana growth in remote areas, DEA grants for purposes of drug interdiction would seem to require or at least envision that grant money would be used to fund aircraft operations. Therefore, assuming that the aircraft operation was not necessary to respond to a significant and imminent threat to life or property, a state aircraft operation to conduct drug interdiction pursuant to a DEA grant is considered .a civil aircraft operation. Such an aircraft operation by the state is considered a civil aircraft operation regardless of whether the grant mentions that aircraft will be used to
carry out the purpose of the grant.

While state aircraft operations to conduct drug interdiction efforts pursuant to DEA grants are considered civil aircraft operations, this does not necessarily mean that the state needs a part 1 19 certificate to conduct such operations. For example, aircraft operated by the state for aerial surveillance to locate marijuana fields would likely fall within the aerial work operations exception to the applicability of part 119. The state would not need a part 119 certificate to conduct such operations; however, the state would have to comply with all statutory and regulatory requirements that apply to the operation of civil aircraft under part 91 of the Federal Aviation Regulations. Any questions regarding whether a part 119 certificate is needed to conduct a certain operation should be directed to the appropriate Flight Standards District Office for the jurisdiction involved.

I hope this satisfactorily responds to your request. If you need additional information or have any questions, please contact Cindy Dominik, a manager in the Enforcement Division, at 202-267-7560.

Sincerely,

ORIGINAL SIGNED BY
NICHOLAS G. GARAUFIS

Nicholas G. Garaufis
Chief Counsel