Federal Aviation Administration

Memorandum

Date: AUG 17 2010

To: Christopher Merrill, Attorney, AWP-007

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

Subject: Pilot hazmat training for public aircraft operations

You forwarded us a question from Mr. Floyd Seals, a pilot employed by a private company. Mr. Seals's employer contracts with the United States Department of Energy (DOE) to operate DOE's King Air 200 aircraft carrying hazardous materials (hazmat) as cargo between U.S. government facilities.

Your request includes two questions. The first is whether the flights in DOE aircraft are public aircraft operations. The second is whether Mr. Seals, who is not an employee of DOE, must meet the hazmat training requirements when piloting a public aircraft operation.

In 49 USC §40102 (a)(41)(A), a public aircraft is defined as "an aircraft used only for the United States Government, except as provided in section 40125(b)." Section 40125(b) states that an aircraft "does not qualify as a public aircraft ... when the aircraft is used for commercial purposes or to carry an individual other than a crewmember or a qualified non-crewmember." In that statute, 'commercial purposes' means "the transportation of persons or property for compensation or hire....".

When the DOE uses its own aircraft to transport hazardous materials as part of its function, the operation qualifies as a public aircraft operation. Nothing in the public aircraft statue speaks to the status of the pilot (including the nature of the pilot's employer, whether a government or non-government entity) as a factor that changes the status of the operation. When operating a DOE aircraft for a DOE operation, the flight is a public aircraft operation and is not subject to Title 14 of the Code of Federal Regulations.

Similarly, when DOE carries hazmat for another federal agency such as NASA and gets reimbursed, the operation remains a public aircraft operation. Different agencies of the U.S. government are not treated as different governments or legal entities and the reimbursement for the cost of operation is not considered compensation or hire.

The general legal principle of 'one federal government' applies to this type of activity conducted between agencies.

Regarding the hazmat cargo, the federal hazardous materials law, 49 USC §5101 *et seq.*, governs the transportation of hazardous materials in commerce. Commerce is defined in that statute as "trade or transportation in the jurisdiction of the United States – (A) between a place in a state and a place outside of the State; or (B) that affects trade or transportation between a place in a State and a place outside of the State."

That statute and its implementing regulations (The Department of Transportation Hazardous Materials Regulations (HMR), 49 CFR parts 171-175) apply to persons who transport or cause hazardous materials to be transported in commerce. Section 5102 (9) defines 'person' to include "a government, Indian tribe, or authority of a government or Indian tribe offering hazardous materials for transportation in commerce or transporting hazardous materials to further commercial enterprise." The term 'hazmat employer' means, in part, a person using at least one employee of that person in connection with transporting hazardous materials in commerce or causing hazardous materials to be transported in commerce. 49 USC §5102(4)(A). Under this statutory scheme, we find that Mr. Seals's employer is a person that is subject to the requirements of the Federal hazardous materials law and the HMR, including the training requirements contained in part 172, Subpart H – Training.

Finally, we note that not all aircraft operations by a civilian federal agency for itself or another federal agency automatically qualify as public aircraft operations. Under the terms of §40125, federal government aircraft operations are still limited by the commercial purposes provision of §40125 (b) cited above. Further, if DOE operated such a flight for a non-federal entity, such as the State of Nevada, the commercial purpose provision would most likely apply, making the flight a civilian operation subject to the requirements of Title 14, including any training requirements for the pilot contained in those regulations.

If you have any questions concerning this interpretation, please contact my staff at 202-267-7084. This interpretation as prepared by Karen Petronis, Senior Attorney for Regulations, and coordinated with Allan H. Horowitz, Manager, Special Programs Branch of the Enforcement Division, Office of the Chief Counsel.