U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

FEB 25 2010

Mr. James Wagner
20828 Morgans Choice Lane
Pflugerville, TX 78680

Dear Mr. Wagner,

This is in response to your request for a legal interpretation dated October 9, 2009. You inquire whether you may be reimbursed by your employer for operating expenses incurred in transporting company property by airplane. You submitted this request to FAA Southwest Regional Counsel, which forwarded it to this office for response.

In your request, you state that you, a 400-hour commercially-certificated and instrument-rated pilot and scientist, seek to enter into an agreement with your employer in which you would rent and fly a Beech Bonanza A36 to transport company property from your employer's satellite laboratory to the main laboratory. This trip would entail flying from Addison airport (KADS) to Georgetown Municipal Airport (KGTU) twice a night, Monday through Friday, between the hours of 1900 and 0100. Furthermore, you state that you would "only [be] reimbursed operating expenses for the use of the plane" and that "[t]he aircraft will not be used to fly any person or property for any business affiliate or potential business client of [your employer]." You inquire whether, under the above-stated factual scenario, such an agreement and flight operation would be allowed under Federal Aviation Regulations. You also raise an issue regarding the scope of private or noncommon carriage under this scenario.

Although the flights you propose do not constitute common carriage operations, they fall within the definition of on demand operations and are subject to the certificate rules of part 119 and operating rules of part 135. *See* 14 C.F.R. § 119.3 ("When common carriage is not involved or operations not involving common carriage means any of the following: (1) Noncommon carriage . . . (4) Private carriage."); 14 C.F.R. § 119.3 ("On-demand operation means any operation for compensation or hire that is . . . (ii) Noncommon or private carriage operations conducted with airplanes having a passenger-seat configuration of less than 20 seats, excluding each crewmember seat, and a payload capacity of less than 6,000 pounds[.]"); *see also* 14 C.F.R. §§ 119.23(b), 135.1(a).

The FAA construes "compensation or hire" very broadly. *See* Legal Interpretation to Joseph Kirwan, from Rebecca P. MacPherson, Assistant Chief Counsel, Regulations Division (May 27, 2005). It does not require a profit, profit motive, or the actual payment of funds. *Id.* Instead, under the FAA's view, compensation is the receipt of anything of value. *Id.* Thus, compensation for the noncommon carriage or private flights you propose would exist in two forms: First, your employer would reimburse the expenses associated with the flights to you. *Cf.* Legal Interpretation to John W. Harrington, from Donald Byrne, Assistant Chief Counsel (Oct. 23, 1997) (citing as an example of compensation the reimbursement of operating expenses to the pilot). Second, you would acquire flight hours at your employer's expense –

hours that could be used to demonstrate aeronautical experience eligibility for an airman certificate or other regulatory requirement. *See* Legal Interpretation to Joseph Kirwan, from Rebecca P. MacPherson, Assistant Chief Counsel for Regulations (May 27, 2005).

These forms of compensation are sufficient to require you to comply with various part 119 certification requirements and the operating rules of part 135. *See* 14 C.F.R. § 119.23(b), 135.1(a).

We appreciate your patience and trust that the above responds to your concerns. If you require further assistance, please contact my staff at (202) 267-3073. This response was prepared by David Pardo, attorney for the Operations Law Branch of the Regulations Division of the Office of the Chief Counsel, and coordinated with the General Aviation and Commercial Division of Flight Standards Service.

Sincerely,

Rebecca B. MacPherson
Assistance Chief Counsel for Regulations, AGC-200