Federal Aviation Administration

Memorandum

Date: MAY 12 2011

To: Melvin O. Cintron, Division Manager, General Aviation and Commercial Division, AFS-800

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

Prepared by: Anne Moore, Attorney, AGC-240

Subject: Pilot-in-command proficiency check requirements for pilots conducting repositioning flights in conjunction with agricultural aircraft operations

This memorandum responds to your request for a legal interpretation regarding the applicability of the pilot-in-command proficiency check required by § 61.58(a) to pilots conducting repositioning flights in conjunction with part 137 agricultural aircraft operations.

Section 61.58(a) requires a pilot to receive an annual proficiency check to serve as pilot in command of an aircraft type certificated for more than one required pilot flight crewmember. This requirement does not apply to persons conducting agricultural aircraft operations under part 137. 14 C.F.R. § 61.58(b). As defined in the regulations, an agricultural aircraft operation is "the operation of an aircraft for the purpose of (1) dispensing any economic poison, (2) dispensing any other substance intended for plant nourishment, soil treatment, propagation of plant life, or pest control, or (3) engaging in dispensing activities directly affecting agriculture, horticulture, or forest preservation, but not including the dispensing of live insects." 14 C.F.R. § 137.3.

We concur with your position that a repositioning flight conducted by a part 137 certificate holder does not fall under the exception in § 61.58(b). The glossary to the Aeronautical Information Manual states that a ferry flight includes a flight for delivering an aircraft from one location to another. We have consistently stated that such "repositioning" flights are operations conducted under part 91. Accordingly, a pilot who is repositioning an airplane for the purpose of conducting agricultural aircraft operations must satisfy the pilot-in-command proficiency check requirements of § 61.58(a) if the aircraft involved is type certificated for more than one required pilot flight crewmember.

Any questions additional questions concerning this memorandum should be directed to the Office of the Chief Counsel, Regulations Division.