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Federal Aviation Administration

Memorandum

Date: FEB 24 2012

To: James E. Gardner, Manager, Flight Standards Division, AGL-200

THRU: Jeffrey Klang, Great Lakes Regional Counsel, AGL-7

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

Subject: Interpretation of public aircraft operation status for aircraft leased by the Metropolitan Mosquito Control District of Minnesota

This is a response to your memo to the Office of the Chief Counsel regarding public aircraft operation for mosquito control operations in the Minneapolis metropolitan area. We apologize for the delay in responding to your request which we understand got misrouted.

Your question concerns an operator that contracts with the Metropolitan Mosquito Control District (MMCD) of the State of Minnesota, headquartered in Saint Paul. Your request includes a letter from the MMCD to its contracted operator indicating that it considers the flights to be public aircraft operations. You request whether, given the language of the statute and FAA guidance materials, such a conclusion is correct.

As presented, the contract with the MMCD appears to be a valid public aircraft operation. As a state entity, MMCD is correct in concluding that any contracted operation by a state must be for exclusive use for a minimum of 90 days (49 USC §40102(a)(41)(D)). MMCD indicates in the attached letter to Scott's Helicopter Services that seven helicopters are to be exclusively used for MMCD purposes from April 1 through October 31, satisfying this requirement.

You question whether mosquito spraying is a valid governmental function under §40125(b). The question of governmental function does not arise in this particular analysis. The term governmental function is used in §40125(a)(3) and only becomes a factor when assessing the presence of qualified non-crewmembers on board an aircraft. Your request does not indicate that there is anyone aboard these flights who would trigger the analysis, so the reference to governmental function is also not triggered. However, we note that in general, mosquito spraying could be considered a governmental function under the statute's inclusion of biological resource management in §40125(a)(2), if the analysis were necessary because of the presence of qualified non-crewmembers.

You ask whether the contractor being compensated for operation of these helicopters triggers the statutory prohibition on operation for compensation or hire in §40125(a)(1). It does not. The prohibition stops government entities from being compensated for conducting a public aircraft operation. When hiring a contractor, as MMCD is doing here, the government entity is having someone else carry out its public aircraft function. Only when the government entity receives reimbursement of some kind or expects to charge for conducting the operation would the prohibition be triggered. The cost of operation is borne by the government entity, whether performed by the government entity or by a contractor. In this instance, if the MMCD assessed a specific charge for spraying on an entity receiving the service, the commercial purpose clause would be triggered.

Accordingly, your conclusion that flights operated by Scott's for MMCD are automatically Part 137 civil operations is not correct. Certain sections of Part 137 may still apply to public aircraft operations conducted under that part[1], but the application of the part is not because Scott's is a civil operator receiving compensation.

We emphasize that under the FAA policy adopted in March 2011, MMCD should be producing a written declaration for use by Scott's (or any other contractor it uses) to acknowledge that the contracted flights are a valid public aircraft operation that is the responsibility of the government entity to oversee. That declaration should be given to the operator, and the operator should present it to its principal inspector or FSDO where it operates to have on file before conducting public aircraft operations under the contract. The letter from MMCD to Scott's is not a proper declaration primarily because it did not identify the particular aircraft to be operated. If Scott's is unable to produce a valid declaration from MMCD, Scott's would be considered a civil operator and subject to all applicable regulations for its operations; presence of a contract alone does not confer public aircraft operation status. Further guidance on this declaration, including information that should be included, can be found in the draft advisory circular on Public Aircraft Operations, AC 00-1.1A. The draft can be viewed on www.regulations.gov under the docket FAA-2012-0156. The original policy statement was published at 76 FR 16349 (March 23, 2011) and was referenced in a Memorandum from AFS-1 to the ASI Work Force (January 24, 2011).

This interpretation was drafted by Karen Petronis, Senior Attorney for Regulations in my office, and was coordinated with the Flight Standards Service, General Aviation and Commercial Division, AFS-800. If you have any further questions regarding this interpretation, please contact Karen Petronis at 202-267-3073.

[1]For example, §137.51 would apply to operation over congested areas whether the flight is a civil or public aircraft operation. Other sections may similarly apply but are not being highlighted here. Please contact AFS-800 for guidance on the application of other sections of Part 137 to public aircraft operations.