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

AUG 16 2016

Sergeant Morrie Zager
L.A.S.D. Aero Bureau
3235 Lakewood Boulevard
Long Beach, CA 90808

Re: Persons on board during a public aircraft operation

Dear Sergeant Zager,

On September 15, 2014, you sent an email to a member of my staff requesting an interpretation of a proposed public aircraft operation by your organization.

You indicated that you have an AS3321 Super Puma that you usually operate as a Part 91 aircraft. You note that at times you operate it instead as a public aircraft operation (PAO). You state that you "believe when one of our Department Managers (high ranking executive) *wants to* come on board to *observe and evaluate* our SAR program (determine its viability, etc.) that the manger should be able to remain aboard under all circumstances, including times when we may find the need to operate as a PAO." [emphases added] You go on to characterize the management evaluation flight as "vital" and ask whether it therefore may be considered a governmental function.

The description you provide suggests that you consider such observation and evaluation flights with an executive on board to be civil, not PAO, since it has to do with that persons desire to observe a flight and your question about remaining on board during changed circumstances, such as a sudden PAO assignment. We would agree with a finding that observation and evaluation do not qualify as a PAO, but as an internal procedure of your department to be conducted as a civil operation.

We have at least two concerns with the presence of an unspecified "high ranking executive" on board a flight that would be a PAO. First, if there is a person on board who may be viewed in some capacity as the supervisor of a pilot (in your terminology "observe and evaluate") that person may affect the pilot's ability to make decisions under 14 CFR Section 91.3, Authority of pilot in command (PIC). That section applies whether the flight is civil or PAO. If the flight was civil, we would question whether this type of "evaluation" was appropriate since it could imply that someone on board the aircraft other than the PIC might conduct oversight and management of the flight. The same concerns apply to a PAO, since

it is subject to §91.3 and has an additional restriction in the law on the status of persons on board the aircraft[1].

If instead the executive is observing and evaluating the flight itself and not the pilot, such status appears to have nothing to with the governmental function that defines a PAO, such as the rescue of a person during a search and rescue mission, if the executive is there only out of a desire to observe the operation. If there is no actual function for a particular person to be present on board a flight, then that person is not associated with a governmental function, as required by statute, to be present on board a PAO.

The public aircraft statute prohibits carriage of anyone other than crew and "qualified non-crewmembers," which the statute defines as persons associated with a governmental function. We do not agree that the LASD's characterization of onboard observation and evaluation of PAO flights as "vital" automatically makes the activity a governmental function. Since there is no governmental function being accomplished when evaluating flight program viability, non-crewmember persons on board do not become qualified non-crewmembers. The concept of governmental function attaches to the purpose of a particular flight; merely being associated with an aviation program in any capacity does not constitute a governmental function.

Finally, your request did not indicate what if any part of an active PAO would need to be witnessed from on board the aircraft by an executive as it happened, rather than recreated as a training operation or conducted as a routine Part 91 operation. If you are presuming that the PAO includes some part of an operation not otherwise allowed by Part 91, it brings us to the issue of risk, which is always part of our analysis. PAO are for the most part unregulated, and persons who are not flight crewmembers are presumed to be unaware of the risks that are part of unregulated aircraft operations. There is a difference in risk between a part 91operation and a PAO conducted with the same aircraft as demonstrated by the applicability of 14 CFR regulations to one and not the other. The public aircraft statute both narrowly defines governmental function and denies PAO status on aircraft that carry persons not associated with the governmental function of a flight. The statute does not allow an assumption of risk from someone other than a qualified non-crewmember to be on board during a PAO flight.

The FAA does expect that when an aircraft being used in a civil operation (e.g., part 91) is called into service to perform a public aircraft operation, the civil flight would be terminated and the crew complement on board the aircraft conform to the requirements for PAO. In the case of having an undesignated executive on board, we have to presume that the person does not routinely function as a crewmember to suddenly become a "qualified non-crewmember" specific to a governmental function when the need to operate a PAO arises. If you are conducting a civil operation with persons who would not qualify under the public aircraft statute (be they executives or aircraft mechanics), they would need to be dropped off to put the aircraft in proper status to conduct a PAO flight.

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[1] The public aircraft statute limits persons on board to flightcrew and "qualified non-crewmembers" in 49 USC 40125 (a)(3)(B). A qualified non-crewmember is a person "whose presence is required to perform, or is associated with the performance of a governmental function."

This interpretation was prepared by Karen Petronis, Senior Attorney on my staff, and coordinated with the General Aviation and Commercial Division of the Flight Standards Service. Please contact my staff at 202-267-3073 if you have any further questions regarding this interpretation.

Sincerely,

Lorelei Peter
Assistant Chief Counsel for Regulations

Subject: Los Angeles County Sheriff's Department PAO Question

Ms. Petronis, thank you so much for taking my call. Here is my question:
We, at the LASD, operate under Part 91 most of the time. However, our AS332L1 "Super Puma" aircraft which we utilize for Search and Rescue, do occasionally operate as Public Aircraft when we do things such as external hoist work, etc.
The question is: We believe when one of our Department Managers (high ranking executive) wants to come aboard to observe and evaluate our SAR program (determine its viability, etc.) that the manager should be able to remain aboard under all circumstances, including times when we may find the need to operate as a PAO. Would this vital (our determination) evaluation flight by our manager be considered a, "Governmental function" and thus be permitted under PAO rules?

Thank you for your consideration, Morrie.

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