Federal Aviation Administration

Memorandum

Date: MAY 2 4 2018

To: John Duncan, AFX-1

From: Lorelei Peter, Assistant Chief Counsel for Regulations, AGC-200

Prepared by: Courtney Freeman, Attorney, AGC-220

Subject: AFS Request for Legal Interpretation by AGC-200 - AWP-7.2 Opinion/Carriage of Firefighters in Restricted Category Aircraft: 14 CFR § 91.313(d)(3) and (4); § 119.1(e)(4)(iv)

This memo responds to your February 28, 2018 request for legal interpretation regarding the current standing and legal basis of the attached "Legal Opinion under Part 133, dated January 11, 1999," provided by AWP-7.2. In your request, you present a scenario and ask two questions.

The scenario discussed involves a Bureau of Land Management (BLM) contract awarded to a 14 CFR part 133 operator who was alleged to be operating contrary to FAA regulation by another operator. The operator in question was conducting passenger-carrying [firefighters] operations aboard a restricted category aircraft, with the special purpose of forest and wildlife conservation.

Your questions were:

1. Can the 12 firefighters, in the above BLM scenario, be transported aboard a restricted category civil aircraft with the special purpose of forest and wildlife conservation (aerial dispensing of liquids) (ADL) to a location where they are used to extinguish the fire from the ground and remain in compliance with 14 CFR § 91.313(d)(3) or (4)? These firefighters will not hook or unhook the Bambi Bucket nor use a radio to direct the aircraft for ADL. Specifically, are the 12 firefighters considered to be performing an essential function in connection with the special purpose operation for which the aircraft is certificated and/or are they necessary to accomplish the work activity directly associated with that special purpose?

2. Can the 12 firefighters, in the above BLM scenario, be transported aboard the restricted category civil aircraft to a location where they are used to extinguish the fire from the ground, under the aerial work exception prescribed in 14 CFR § 119.1(e)(4)(iv)? (these firefighters will not hook or unhook the Bambi Bucket nor use a radio to direct the aircraft for ADL).

The answer to both of your questions is no – the activity cannot be performed in compliance with §§ 91.313(d)(3) or (4) or 119.1(e)(4)(iv). The 1999 legal opinion attached to this request was issued by a regional office and does not align with FAA legal interpretations of §§ 91.313(d)(3)-(4) or 119.1(e)(4).

Section 91.313(d) states, in relevant part:

> (d) No person may be carried on a restricted category civil aircraft unless that person—
> (3) Performs an essential function in connection with a special purpose operation for which the aircraft is certificated; or
> (4) Is necessary to accomplish the work activity directly associated with that special purpose.

Section 119.1(e)(4)(iv) states:

> Except for operations when common carriage is not involved conducted with airplanes having a passenger-seat configuration of 20 seats or more, excluding any required crewmember seat, or a payload capacity of 6,000 pounds or more, this part does not apply to—
> (4) Aerial work operations, including—
> (iv) Fire fighting;

Under § 91.313(d)(3) or (4), the persons aboard the aircraft must be actually participating in the special purpose operation, which is the aerial dispensing of liquid for firefighting, or be essential to that aerial dispensing of liquid. Transportation of firefighters for ground firefighting from one location to another is not related to the special purpose operation for which the aircraft is certificated.

With respect to § 119.1(e)(4)(iv), if the firefighters are performing an aerial work operation (firefighting from the aircraft), the certification requirements of part 119 do not apply. However, in this instance, the aircraft is transporting firefighters for ground firefighting, which is not an aerial work operation. Even if the aircraft operation involved both aerial work and transportation, the exception from part 119 certification would not be applicable. The FAA has consistently stated in a series of legal interpretations that a flight that serves the dual purpose of transportation and aerial work does not fall under the aerial work exception detailed in § 119.1(e)(4). [1]

We appreciate your patience and trust that the above responds to your inquiry. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Courtney Freeman, an attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the General Aviation and Commercial Division and the Air Transportation Division of the Flight Standards Service (AFS-800 and AFS-200).

---

[1] For further reference, please see, e.g.: Legal Interpretation to Mona Bentz (June 2016); Legal Interpretation to Gregory Winton (Feb. 2013); Legal Interpretation to Ray Bonilla (Sept. 2011).

Federal Aviation Administration

Memorandum

Date:

To: Lorelei Peter, Assistant Chief Counsel for Regulations, AGC-200

From: John S. Duncan, Executive Director, Flight Standards Service, AFX-1

Subject: Legal Interpretation Requests – AWP-7.2 Opinion/Carriage of Firefighters in Restricted Category Aircraft: 14 CFR § 91.313(d)(3)(4) and § 119.1 (e)(4)(iv)

CONCURRENCES	
ROUTING SYMBOL	AFX-1
INITIALS/SIG	
DATE	2.26.18
ROUTING SYMBOL	AFB-140
INITIALS/SIG	
DATE	02/13/18
ROUTING SYMBOL	AFS-800(for)
INITIALS/SIG	JVF
DATE	2/13/2018
ROUTING SYMBOL	AFS-820
INITIALS/SIG	RMM
DATE	2/13/2018
ROUTING SYMBOL	AFS-820 SME
INITIALS/SIG	RAF/JHA
DATE	10/02/2017
ROUTING SYMBOL	AFS-200
INITIALS/SIG	SCM
DATE	1/26/18
ROUTING SYMBOL	AFS-250
INITIALS/SIG	RJP
DATE	1/5/18
ROUTING SYMBOL	AFS-7
INITIALS/SIG	LB
DATE	2/22/18

Flight Standards Service is in receipt of a request from the General Aviation and Commercial Division, AFS-800, for a legal interpretation as to the current standing and legal basis of the attached "Legal Opinion under Part 133, dated January 11, 1999," provided by AWP-7.2. Specifically, does current FAA policy and regulation support the AWP-7.2 opinion regarding the carriage of "The only other personnel that would be on the helicopter would be additional fire fighters that would need to be moved to inaccessible areas," not in support of the Aerial Dispensing of Liquids (ADL), aboard a Restricted Category Civil Aircraft under 14 CFR Part §91.313 found therein?

The following events have brought to the attention of the General Aviation and Commercial Division, AFS-800, inconsistencies related to both Industry and internal FAA Interpretation of current policy and regulations:

• A contract solicited by the Bureau of Land Management (BLM) to conduct Civil Aircraft Operations (CAO), in a Restricted Category Civil Aircraft, under 14 CFR part 91 General Operating Rules. Contract eligibility explicitly required either a Standard or Restricted Category Aircraft "With Twelve (12) insured personnel seats not including the pilot and copilot seats. Operated by a two-pilot crew." The contract further stated; "The intent of this single award IDIQ contract is to obtain fully Contractor operated and maintained Exclusive Use Helicopter (EU) flight services for 120 calendar days to transport personnel and/or cargo in support of Government natural resource missions for the Bureau of Land Management (BLM)." (This contract was solicited, entered in to, and executed for the 2017 fire season).

• As a result of this solicited contract, one particular FAA-Certificated 14 CFR part 133 Operator informed the BLM such operations, as prescribed in the solicited contract, would not be in compliance with current FAA policy and regulations. This operator refrained from bidding the contract for such reasons, resulting in the awarding of the $14 million contract to another FAA-Certificated 14 CFR part 133 Operator who subsequently submitted a bid to fulfill the services requested by the BLM.

• The non-bidding 14 CFR part 133 Operator filed an official complaint with the General Aviation & Commercial Division, Commercial Operations Branch, AFS-820, alleging the BLM contract-awarded 14 CFR part 133 operator was observed operating contrary to current FAA policy and regulations by conducting passenger-carrying [firefighters] operations aboard a Restricted Category Aircraft, with the Special Purpose of Forest and Wildlife Conservation. The BLM claims these 12 firefighters were required to provide ground support to the Restricted Category Civil Aircraft's Special Purpose operation of ADL (included in the Special Purpose of Forest and Wildlife Conservation for firefighting). This same operator subsequently filed a Congressional complaint alleging the same (AFS-820 responded to the Congressional and informed the complainant an investigation in to the alleged violation has been initiated).

• The investigation of the official complaint was conducted by the Sacramento (WP25) Flight Standards District Office (FSDO). Documentation gathered through the investigation revealed conflict between the "Legal Opinion under part 133, dated January 11, 1999," provided by AWP-7.2., and current policy held by the General Aviation and Commercial Division, Commercial Operations Branch, AFS-820 and the Air Transportation Division, 135 Air Carrier Operations Branch, AFS-250, as well as the respective regulations. The conflict specifically relating to "The only other personnel that would be on the helicopter would be additional fire fighters that would need to be moved to inaccessible areas."

Current FAA policy takes the position if a person performs an essential function in connection with a special purpose operation for which the aircraft is certificated, or is necessary to accomplish the work activity directly associated with that special purpose, then the operation involving the carriage of such persons or material, including to the location of that operation, are permissible under 14 CFR § 91.313(d)(3)(4) and §119.1 (e)(4)(iv).

FAA policy refers to all special purpose operations. However, the examples given below are specific to the special purpose operation of forest and wildlife conservation (ADL) and the scenario described also below.

Examples of "allowable persons" would be the person(s) required to attach and detach the water dispensing apparatus (Bambi Bucket) to the aircraft, or a ground person(s) required to radio the aircraft to specify water-dispensing locations.

In the below scenario, the 12 firefighters are essential to the BLM's firefighting mission with regard to extinguishing the fire from the ground, however they are not specifically required for the aircraft to conduct its special purpose operation of ADL. In this case, the person(s) responsible for extinguishing the fire on the ground would be considered non-essential/unnecessary person(s).

Scenario: The BLM claims the 12 firefighters carried aboard the Restricted Category Civil Aircraft are in support of the aircraft's special purpose of Forest and Wildlife Conservation, specifically ADL in such the operation of ADL does not extinguish the flames/fire. The ADL only suppresses the flames to an acceptable height, and reduces the temperature of the fire to an acceptable level whereas the firefighters may then enter the area in an attempt to

contain/extinguish the fire. Under these premises, the BLM determines the transportation of these 12 firefighters is in compliance with 14 CFR § 91.313(d)(3)(4) and § 119.1 (e)(4)(iv).

For the above reasons, AGC legal interpretation is requested, in providing clarity and consistency regarding the following questions specific to the above scenario prior to the 2018 fire season:

1. Can the 12 firefighters, in the above BLM scenario, who are only being transported to a location where they are used to extinguish the fire from the ground, be transported aboard a Restricted Category Civil Aircraft, having the Special Purpose of Forest and Wildlife Conservation (ADL) and remain in compliance with 14 CFR § 91.313(d)(3) or (4)? (Note: The firefighters will not perform tasks associated with the aerial portion of the mission, such as hook/unhook the Bambi Bucket, nor use a radio to direct the aircraft for ADL). Specifically, are the 12 firefighters considered to be performing an essential function in connection with a [the] special purpose operation for which the aircraft is certificated; and/or are they necessary to accomplish the work activity directly associated with that special purpose?

2. Can the 12 firefighters, in the above BLM scenario, who are only being transported to a location where they are used to extinguish the fire from the ground, be transported aboard a Restricted Category Civil Aircraft, having the Special Purpose of Forest and Wildlife Conservation (ADL) and remain in compliance with the aerial works prescribed in 14 CFR § 119.1 (e)(4)(iv)? (Note: The firefighters will not perform tasks associated with the aerial portion of the mission, such as hook/unhook the Bambi Bucket, nor use a radio to direct the aircraft for ADL).

Attachment:
AWP-7.2 Legal Opinion under Part 133, dated January 11, 1999

Federal Aviation Administration

Memorandum

Date: February 13, 2018

To: John S. Duncan, Executive Director, Flight Standards Service, AFX-1
ATTN: Rick Domingo, Director, Office of Safety Standards, AFS-1

JOSEPH V FAGAN JR Digitally signed by JOSEPH V FAGAN JR Date: 2018.02.13 14:57:11 -05'00'

From: Bradley Palmer, General Aviation and Commercial Division, AFS-800

Prepared by: Michael Machnik, Technical Operations Branch, AFS-840

Subject: AFS Request for Legal Interpretation by AGC-200 - AWP-7.2 Opinion/Carriage of Firefighters in Restricted Category Aircraft: 14 CFR § 91.313(d)(3)(4) and § 119.1 (e)(4)(iv)

Overview: An investigation was completed on an official complaint (Congressional also submitted by complainant), alleging illegal passenger-carrying (firefighters) operations, providing support of Aerial Dispensing of Liquids (ADL), on a Restricted Category Civil Aircraft under a fourteen ($14) million dollar Bureau of Land Management (BLM) awarded contract for the 2017 fire season. The results of this investigation revealed internal conflicting opinion/interpretation between "AWP-7.2 Opinion under Part 133, dated January 11, 1999" and current policy and regulation.

AFS-840 requests approval of the attached legal interpretation package for AGC-200 review.

[ ] Approved

[ ] Disapproved

Attachments(2):
AFX-1 Request for Legal Interpretation by AGC-200 - AWP-7.2 Opinion/Carriage of Firefighters in Restricted Category Aircraft: 14 CFR Part §91.313(d)(3)(4); §119.1 (e)(4)(iv)
AWP-7.2 Opinion under Part 133, dated January 11, 1999

ENCL 1

U.S. Department of Transportation
Federal Aviation Administration

Memorandum

Subject: Legal Opinion under Part 133 Date: January 11, 1999

From: AWP-7.2 Reply to Attn. of: Brenda K. Vosguanian: (310) 725-7115

To: [redacted]

This interpretation regarding operations under Part 133 of the Federal Aviation Regulations is in response to the proposed fire fighting operation, as delineated in [redacted] letter from [redacted]

The aircraft assigned for the proposed fire fighting operation is aircraft registration number [redacted] a Garlick UH-1B helicopter which currently is a restricted category aircraft operated under [redacted] Part 133 operating certificate. [redacted] is a restricted category aircraft certificated under the provisions of Part 21 as an Agriculture, Forest and Wildlife conservation, Aerial Surveying, Patrolling and External Cargo aircraft.

[redacted] proposes to have the subject aircraft depart with an initial attack fire fighting crew and a water bucket stored inside the helicopter. When the helicopter finds a suitable landing area next to the fire, the helicopter will land and the crew will get off and then the crew will hook the water bucket to the helicopter. The helicopter would take off leaving the crew to start fighting the fire from the ground and guide the helicopter to the best place to start dropping water. Once the fire is extinguished, the crew would load the water bucket, and get on board to return to the base. The only other personnel that would be on the helicopter would be additional fire fighters that would need to be moved to inaccessible areas.

The above described fire fighting operation, given the facts and circumstances herein, would be approved under Section 91.313(d) of the Federal Aviation Regulations since the carriage of persons aboard the restricted category aircraft is necessary to accomplish the fire fighting purpose, a special purpose operation for forest and wildlife conservation [see F.A.R. section 21.25(b)(2)],

and, therefore, is not to be considered the carriage of persons or property for compensation or hire.

Brenda K. Vosguanian