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

Office of the Chief Counsel

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

August 14, 2025

Anthony Hudson
Chief Pilot
Hillsborough County Mosquito Management Services
Engineering & Operations
Public Works Administration

Dear Mr. Hudson:

Thank you for the request for a legal interpretation submitted by electronic mail on April 4, 2025. You requested a legal interpretation concerning the public aircraft statute, 49 U.S.C. § 40125 ("Qualifications for Public Aircraft Status"). Specifically, you asked whether reimbursement from the Federal Emergency Management Agency (FEMA) for post-storm operations as part of a disaster response would qualify as an exception to the "commercial purpose" definition under § 40125(a)(1).

The FAA has determined that FEMA reimbursement to another government entity could fall under the commercial purpose exception, provided the statutory criteria are met.

You also asked about the process of identifying a governmental function for the purposes of the public aircraft statute and whether you need to outline a policy, standard operating procedure (SOP), or memorandum explaining that process. This question is discussed at the end of this letter.

Background

In your email, you explained that Hillsborough County Mosquito Management Services is a government entity conducting public aircraft operations (PAO) using two county-owned Bell helicopters. You also stated that you satisfy all the requirements to qualify as PAO under the statute and that you do not hold any civil certificates.

Discussion

Commercial Purpose Exception to 49 U.S.C. § 40125(a)(1)

As mentioned, your question is whether FEMA reimbursement to another government entity falls under the exception in § 40125(a)(1). The public aircraft statute states that an aircraft does

not qualify as a public aircraft when that aircraft is used for "commercial purposes" or to carry an individual other than a crewmember or qualified non-crewmember.[1]

However, § 40125(a)(1) further defines "commercial purposes" as:

> [T]he transportation of persons or property for *compensation* or hire, but does not include the operation of an aircraft . . . by one government on behalf of another government under a cost reimbursement agreement if the government on whose behalf the operation is conducted certifies to the Administrator of the Federal Aviation Administration that the operation is necessary to respond to a significant and imminent threat to life or property (including natural resources) and that no service by a private operator is reasonably available to meet the threat.[2]

Typically, the FAA considers reimbursement for an aircraft operation to constitute a commercial purpose because the Agency construes "compensation" broadly. In fact, the FAA has issued several legal interpretations explaining what constitutes compensation:

> [C]ompensation does not require a profit, a profit motive, or the actual payment of funds . . . Rather, compensation is the receipt of anything of value. The FAA has previously found that reimbursement of expenses (fuel, oil, transportation, lodging, meals, etc.), accumulation of flight time, and goodwill in the form of expect [*sic*] future economic benefit could be considered compensation.[3]

And for public aircraft operations specifically, the FAA has stated, "[N]o reimbursement may be accepted. The law prohibits any kind of commercial purpose for the public aircraft operation . . . ."[4] This broad interpretation of compensation intentionally limits the operations that qualify as PAO.

Notwithstanding the FAA's broad interpretation of compensation, § 40125(a)(1) carves out an exception to the reimbursement-is-compensation rule by allowing one government to reimburse another government as long as three elements are met. First, the two governments must have a cost reimbursement agreement in place. Second, the government on whose behalf the operation is conducted must certify to the FAA that the operation is necessary to respond to a significant *and* imminent threat to life or property (including natural resources). Third, the government

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[1] 49 U.S.C. § 40125(b).
[2] 49 U.S.C. § 40125(a)(1) (emphasis added).
[3] Williams Legal Interpretation at 1 (Jul. 9, 2014), https://drs.faa.gov/browse/excelExternalWindow/FAA000000000LEGALINTPR2014092PDF.0001?modalOpened=true (citing Kirwan Legal Interpretation (May 27, 2005), Harrington Legal Interpretation (Oct. 23, 1997), and Blakely v. Murray, NTSB Order No. EA-5061 (Oct. 28, 2003)).
[4] Aman Legal Interpretation at 1 (Nov. 14, 2011), https://drs.faa.gov/browse/excelExternalWindow/FAA000000000LEGALINTPR2011003PDF.0001?modalOpened=true.

must also certify to the FAA that no service by a private operator is reasonably available to meet the threat.

The legislative history for the public aircraft statute provides additional clarity on the commercial purpose exception. The House of Representatives added an amendment to the original public aircraft statutory language to ensure that, in the case of certain emergencies, aircraft are available to address the emergency. "This amendment merely permits government entities to take advantage of available government-owned aircraft in emergency situations when aircraft owned by private operators are not available . . . cost reimbursement should not prevent the utilization of available aircraft."[5] Congress clearly recognized the public interest in ensuring aircraft are available to address emergencies, especially in cases where the only available aircraft are government-owned. In times of emergency, Congress was willing to make exceptions to the rule that reimbursement is impermissible for public aircraft operations.

As a result of the language in § 40125(a)(1) and that section's legislative history, the FAA has determined that reimbursement by a federal department or agency (e.g., FEMA) to another government (e.g., a state or county government) is permissible if the operation meets the criteria outlined in § 40125(a)(1). The two governments must have a cost reimbursement agreement in place. An existing agreement helps ensure that the two governments understand under what terms reimbursement would be permissible for an operation, thereby reducing the risk of confusion or disagreement after the operation has occurred. An established agreement between the governments would also help ensure timely and orderly execution of available resources when the threat to life or property strikes.

In addition, the federal department or agency must certify to the FAA that 1) the operation is necessary to respond to a significant and imminent threat to life or property (including natural resources) and 2) no service by a private operator is reasonably available to meet the threat. If the federal entity does not certify to the FAA, or if the FAA determines the operation does not meet the § 40125(a)(1) criteria, the operation would constitute a commercial purpose and would need to comply with the applicable civil regulations under title 14 of the Code of Federal Regulations.

The FAA makes no determination as to whether Hillsborough County Mosquito Management Services' operations on behalf of FEMA would meet the § 40125(a)(1) criteria. Not enough detail was provided for the FAA to make that determination. In addition, the FAA would initially rely on whether FEMA is willing to certify that the operations are necessary to respond to a significant and imminent threat and that no private operator was reasonably available.

Governmental Function Policy

In addition to requesting FAA's interpretation on § 40125(a)(1), you asked about the process of identifying a governmental function and whether you need to outline a policy, standard operating procedure (SOP), or memorandum. Specifically, you stated, "So long as we define our operations as supporting our government function, we define which members are qualified non-

[5] 140 Cong. Rec. 27308 (Oct. 3, 1994), https://www.congress.gov/103/crecb/1994/10/03/GPO-CRECB-1994-pt19-4-2.pdf.

crewmembers in support of that function correct? How must we codify that? Do we need to list those functions and non-crewmember roles in some form of policy, SOP or memorandum?"

For PAO purposes, the FAA does not require a government entity to implement a certain process memorializing its operations or qualified non-crewmembers. That said, it is recommended that the government entity establish a process for identifying its PAO and its qualified non-crewmembers since the status of an operation (public versus civil) is determined on a flight-by-flight basis.[6] Established PAO policies and procedures may help reduce any confusion surrounding those operations.

As an aside, the FAA highlights that the FAA Administrator is vested with the authority to determine what constitutes a governmental function under the public aircraft statute. The "governmental function" definition under § 40125(a)(2) includes an illustrative, rather than exhaustive, list of valid operations that constitute a governmental function.[7] The definition includes a catch-all clause at the end: ". . . or any other activity undertaken by a governmental entity that the *Administrator* determines is inherently governmental."[8] Though government entities have some latitude in identifying their operations and what they consider to be a governmental function, Congress delegated the authority of determining governmental functions to the FAA Administrator.

The FAA previously addressed a similar question of whether state legislatures have the authority, through state legislation, to outline what they consider to be a governmental function. The FAA concluded, "[T]he decisions of a state legislature cannot be used as the sole standard for findings made under a federal statute to determine status as a PAO. To do so would turn the authority to determine the limits of the statute enacted by Congress over to state legislatures . . . ."[9] As a result, the FAA reserves the right to review a proposed operation to determine if it meets the definition of a governmental function. That said, the FAA has issued several legal interpretations on what constitutes a governmental function. Those can be found on FAA's legal interpretations website.[10] The FAA previously determined that mosquito spraying could be considered a governmental function under the statute's inclusion of biological resource

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[6] *See, e.g.,* Johnson Legal Interpretation at 2 (Nov. 30, 2011), https://drs.faa.gov/browse/excelExternalWindow/FAA000000000LEGALINTPR2011053PDF.0001?modalOpened=true; Miami-Dade Fire Rescue Department Interpretation at 1 (Jul. 14, 2011), https://drs.faa.gov/browse/excelExternalWindow/FAA000000000LEGALINTPR2011005PDF.0001.

[7] "The term 'governmental function' means an activity undertaken by a government, such as national defense, intelligence missions, firefighting, search and rescue, law enforcement (including transport of prisoners, detainees, and illegal aliens), aeronautical research, biological or geological resource management (including data collection on civil aviation systems undergoing research, development, test, or evaluation at a test range (as such term is defined in section 44801)), infrastructure inspections, or any other activity undertaken by a governmental entity that the Administrator determines is inherently governmental." 49 U.S.C. § 40125(a)(2).

[8] 49 U.S.C. § 40125(a)(1) (emphasis added).

[9] Bond Legal Interpretation at 2 (Jun. 7, 2016), https://drs.faa.gov/browse/excelExternalWindow/FAA000000000LEGALINTPR2016008PDF.0001?modalOpened=true.

[10] https://drs.faa.gov/browse/LEGAL_INTERPRETATIONS/doctypeDetails?Status=Current.

management.[11] The FAA reiterates that it makes no determination as to whether certain mosquito spraying operations would fall under the § 40125(a)(1) commercial purpose exception.

We appreciate your patience and trust that the above addresses your concerns. This response was prepared by Allison Kendrick, Attorney in the Regulations Division of the Office of the Chief Counsel.

Sincerely,

William McKenna
Chief Counsel

[11] *See* Gardner Legal Interpretation at 1 (Feb. 24, 2012), https://drs.faa.gov/browse/excelExternalWindow/FAA000000000LEGALINTPR2012026PDF.0001.