

MIA08MA203
ATTACHMENT 1

PUBLIC VS. CIVIL AIRCRAFT DOCUMENTATION

TO: All Aviation Command Personnel

DATE: March 05, 2008

FROM: Major A. J. McAndrew, Commander, Aviation Command

<input checked="" type="checkbox"/>	For your information	<input type="checkbox"/>	Take charge of
<input type="checkbox"/>	As requested	<input type="checkbox"/>	For additional information
<input type="checkbox"/>	Approve and return	<input type="checkbox"/>	For comment/recommendation
<input type="checkbox"/>	Note and return	<input type="checkbox"/>	Give me facts so I can answer
<input type="checkbox"/>	See me	<input type="checkbox"/>	Prepare reply for my signature

RE: Public Aircraft (Use) vs. Civil Aircraft (Part 91) Operations

**FORM 42 #08-023
ACTIVE POLICY #41**

Purpose:

Several recently submitted ASRs and concerns from some pilots have identified the need to more appropriately clarify the Command's status while conducting flight operations with Department aircraft. Specifically, personnel are unclear as to whether the Aviation Command is operating aircraft under the "Public Aircraft" statute, FAR Part 91 regulations, or both. The intent of this Form 17 is to provide background information and to clarify our operational status as it relates to our mission profile and the airworthiness of our aircraft. The following information has been prepared in consultation with the Command's Safety Pilot, TFC Mike DeRuggiero and Instructor Pilot, Mr. Mike Gartland.

Background:

Historically, aircraft owned and operated by a government entity, such as the Maryland State Police Aviation Command, were considered to be "public aircraft" and were exempt from many of the requirements in FAA regulations applicable to "civil aircraft," including those governing aircraft airworthiness and flightcrew certification. The passage of Public Law 103-411 (the Independent Safety Board Act Amendment of 1994, made a major change in the definition of "public aircraft." Under this statute, which became effective April 23, 1995, many former public aircraft operations are now subject to the regulations applicable to civil aircraft operations. For example, government owned and operated aircraft used to transport passengers are, in some circumstances, no longer considered to be public aircraft, i.e. VIP flights. Unless they receive an exemption from the administrator, the operators of such aircraft need to meet civil aircraft requirements such as those pertaining to certification, maintenance, and training.

The general purpose of the law, as reflected in legislative history, is to extend FAA regulatory oversight to some government aircraft operations. In part, Congress determined that government owned aircraft, which operate for commercial purposes or engage in transport of passengers, should be subject to the regulations applicable to civil aircraft. This change caused many former public aircraft operations to become subject to the regulations governing civil aircraft and pilot certification, but had little effect on our flight operations because the MSP Aviation Command chose to operate under FAR part 91 as applicable, years prior to the passage of Public Law 103-411.

Interpretation:

According to the FAA's interpretation of Public Law 103-411, defining the status of an aircraft as a "public aircraft" or "civil aircraft" is dependant on its use in government service and the type of operation or mission that the aircraft is conducting. As we are all well aware, the Aviation Command's operational mission profile, as it relates to helicopter operations, is three fold: medical evacuation (medevac) of victims suffering from trauma related injuries; search and rescue (SAR) operations; and law enforcement/homeland security support operations. Again, based on the FAA's interpretation of Public Law 103-411 and the operational definitions listed below, our medevac mission is classified as a "civil aircraft operation" and our search and rescue operations, as well as our law enforcement/homeland security support operations fall under a "public aircraft operation" as long as the applicable "public aircraft" criteria are met, i.e. no one is carried on the aircraft that isn't required to complete the mission.

Operational Definitions:

AC 00-1.1, "Government Aircraft Operations," defines the medical evacuation operation (medevac), as a general matter and does not consider it a government or "public aircraft" operation unless the following criteria are met: the nature of the operation requires the use of an aircraft with special configurations, which may not be eligible for a standard airworthiness certificate; the victim cannot be accessed by ground transportation, insufficient number of properly certified and equipped civil aircraft operating under the appropriate rule, are available to complete the mission; or other, similar non-routine factors are present.

Advisory Circular (AC) 00-1.1 defines the term “search and rescue” as rescue operations most frequently conducted with aircraft equipped with external devices that would not be authorized for operations on civil aircraft. Search operations and the subsequent rescue of persons that may be injured in remote or inaccessible areas are conducted with aircraft that do not meet the regulatory requirements under FAR part 133, for Class D external-load operations but are used in emergency situations where the situation may be determined as “life-critical.” AC 00-1.1 further defines the term as follows: search and rescue is a term meaning aircraft operations that are flown to locate people who cannot be located from the ground. The term includes operations where the aircraft is indispensable to the search, or is the only feasible means of reaching the victim. Victims would be considered to be “associated with” the search and rescue operation. The term “search and rescue” does not include routine medical evacuation of persons due to traffic accidents and other similar incidents or hospital-to-hospital patient transfers.

Operators of government-owned aircraft that transport crewmembers or other persons whose presence is required to perform, or is associated with the performance of a governmental function (i.e., firefighting, search and rescue, law enforcement, etc.) would still be considered a public aircraft operation. In each case, when these persons are transported, the use of the aircraft must be necessary to perform the mission.

Conclusion:

When Aviation Command pilots are involved in a flight operation that would be considered a “civil aircraft” operation, i.e. medevac operations, VIP transports, training flights, mechanic transports, photo flights, etc.; we are operating under FAR part 91, as well as our policy and procedures outlined within the Command’s Operations, Active Policies, and Standardization Manuals. When Aviation Command pilots are involved in a flight operation that would be considered “public aircraft” operation (and the mission meets the operational definition of same), i.e. search and rescue missions and law enforcement support/homeland security operations, etc.; we are operating within the standard operating procedures and standards outlined within the Aviation Command’s Operations, Active Policies and Standardization Manuals for that particular operation. However, while Public Law 103-411 and AC 00-1.1 does allow government agencies to conduct both “civil” and “public” aircraft operations with the same aircraft, operators of aircraft used for “dual purposes,” as is the case with the MSP Aviation Command, the government agencies are required to maintain the airworthiness of the aircraft in accordance with the appropriate regulations applicable to civil aircraft operations as outlined in FAR part 43 and 91, as applicable (**NO EXCEPTIONS**). If, for example, a piece of equipment and/or aircraft system was found to be inoperative on a “duty aircraft” and not relieved per the aircraft MEL under FAR part 91.213, the aircraft is to be considered “not airworthy” and not capable of launching on either a mission considered as a “public aircraft” operation or a mission considered as a “civil aircraft” mission (**ONCE AGAIN, NO EXCEPTIONS**). The only two options available to the pilot in command in this situation are: to have the aircraft item and/or aircraft system found to be inoperative repaired on site by a mechanic; or the DOM or maintenance supervisor will request a “special flight permit” be issued from the local FAA Flight Standards District Office to have the aircraft flown back to Aviation Command Headquarters at Martin State Airport for repairs.

If you require further clarification or guidance, please contact the Command’s Safety Pilot, TFC Mike DeRuggiero or Instructor Pilot, Mr. Mike Gartland.

References:

Advisory Circular (AC) 00-1.1: 4-19-1995, “Government Aircraft Operations.”
Title 49 of the United States Code (49 U.S.C.), section 40102(a)(37).

Demko (Andrews) Jill

From: [REDACTED]
Sent: Thursday, December 11, 2008 8:52 AM
To: [REDACTED]; Demko (Andrews) Jill
Cc: Harris Hooper; [REDACTED]
Subject: Maryland State Police inspections

Corky/ Jill

I did some more research on Maryland State Police activities and this is what I found:

For the 145 Repair Station, KY1R The dates start one year previous to the accident to present

- 1 Tech/ Admin Evaluation Support Facilities
- 1 Tech/Admn Eval Manual
- 1 Aircraft Replace Air Worthiness Certificate limitation
- 6 Aircraft Routine Field Approval
- 1 Surveillance inspection parts and materials
- 1 Surveillance management requirements
- 1 Work Away repairs station
- 1 Surveillance repair station QC system
- 1 facility Inspection
- 2 Surveillance operational experience
- 2 Inspection Tech manuals
- 1 Inspection shop/facilities
- 1 Inspection of shop equipment

For the one Designated Pilot Examiner employed by the Maryland State Police: The dates start one year previous to the accident to present

- 1 Examiner Pilot check
- 3 Surveillance pilot examiner
- 1 Renew CFI

Tony James
Air Safety Investigator
Federal Aviation Administration
Office of Accident Investigation
Office: [REDACTED]
Cell: [REDACTED]

Demko (Andrews) Jill

From: [REDACTED]
Sent: Wednesday, December 10, 2008 3:19 PM
To: Demko (Andrews) Jill; Smith Corky
Cc: Harris Hooper; [REDACTED]
Subject: Maryland State Police

Corky/Jill

In reviewing the Maryland State Police (KY1M) SPAS NPTRS records and surveillance for the time period of one year before the accident the following was revealed:

- 0 enroute inspections
- 0 base inspections
- 0 station inspections
- 0 simulator inspections/checks
- 0 manual reviews
- 0 training programs
- 0 ramp inspections
- 0 records inspections

1 MEL review 10/29/01

What was revealed was a complaint alleging cracks in their helicopters: this was investigated and nothing was found to substantiate the complaint. This occurred 8/23/06

As of today, I have not gotten a legal interpretation of whether this was operated as a Public or Civil aircraft.

Tony James
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