



NTSB concern about confusion surrounding oversight of public aircraft operations prompts guidance and standardization.

# Not Quite Clear

BY WAYNE ROSENKRANS

Persistent confusion about nuances of complying with the U.S. law<sup>1</sup> that separates public aircraft operations from civil aircraft operations should be reduced during 2012, say officials from the U.S. Federal Aviation Administration (FAA), other government agencies and commercial aircraft operators.

The U.S. National Transportation Safety Board (NTSB), however, remains concerned about the pace of improvements and gaps in the safety oversight of contractors by government agencies under the law, which exempts public aircraft operations from compliance with

most U.S. Federal Aviation Regulations (FARs) and safety oversight by the FAA.

During the NTSB public aircraft forum in Washington on Nov. 30 and Dec. 1, 2011, the board questioned diverse stakeholders about oversight of public aircraft and encouraged them to adopt best practices in safety from commercial air transport and their peers. NTSB Chairman Deborah A.P. Hersman said, "From 2000 through the first eight months of 2011, the NTSB has investigated about 350 accidents involving public aircraft operations [that resulted] in 135 deaths. During that time, we have issued more than 90

[related safety] recommendations. ... In May 2011, a private company operating a modified Boeing 707 contracted with the U.S. Navy to perform air refueling, lost an engine and crashed on takeoff from [Naval Base Ventura County] Point Mugu, California. This accident is still being investigated, but the initial investigation reveals significant uncertainty regarding whether the operation was public or civil." That is important because this status can affect safety oversight and related systems and risks, she said.

For example, NTSB determined that the 2008 fatal crash of a contractor's

helicopter near Weaverville, California, while transporting firefighters for the U.S. Forest Service likely was caused in part by “insufficient oversight by the U.S. Forest Service and the FAA,” Hersman said (*ASW*, 2/11, p. 30). “We do not want to come to any more accidents and have finger-pointing [by entities saying,] ‘It’s not my responsibility.’”

The law allows public aircraft operations by the federal government, state governments, the District of Columbia, territories and their possessions and political subdivisions, and the armed forces of the United States, said Karen Petronis, senior attorney for regulations in the FAA Office of Chief Counsel. Within government and industry, however, many have not understood that public aircraft operation is a statutory, flight-by-flight status that must be declared by the overseeing government entity.

“The FAA does not grant permission to operate as a public aircraft,” she said. “The FAA does not have regulations on status, and it cannot write regulations on status.” Nor does a contractor obtain this status merely by having a contract with a government agency. Moreover, the law does not confer this status “when an aircraft is used for commercial purposes or is used to carry an individual other than a crewmember or a qualified non-crewmember<sup>2</sup>,” she said. “The law also does not tell operators what they get [to do] when they qualify for public aircraft operations.” The basic factors in declaring the status are operational details of the mission and the roles of people aboard the aircraft.

### Industry Pushback

Several NTSB members called public aircraft operations an “orphan” of the aviation industry, with no entity having custody of sufficient safety data to evaluate the sector’s risk exposure, accident/incident rates and other indicators. A number of forum panelists disagreed with this characterization and the relative severity of issues raised by the NTSB.

Matt Zuccaro, president of Helicopter Association International and cochair of the International Helicopter Safety Team, said



that imminent improvements include a data initiative to accurately count the hours these helicopters are flying; concentration on inadvertent penetration of instrument meteorological conditions (IMC) and controlled flight into terrain at night; pilot proficiency and currency for operation under instrument flight rules (IFR); and “dedicated IFR helicopter infrastructure with low-level routing, point-in-space approaches and a seamless transition from visual flight rules to IFR.”

He said that a new mission-specific accreditation program — as an overlay to International Standard–Business Aircraft Operations (IS-BAO) registration through the International Business Aviation Council (IBAC) — is scheduled for introduction in January 2012. To resolve confusing issues of operational control of government-contracted aircraft, auditor qualifications to evaluate 55 different standard helicopter missions, and inconsistencies in FAA surveillance, Zuccaro also called for the formation of a public aircraft/mission working group.

“The majority of the missions being flown by both government aircraft and private owner-operator contractors are ... being done now, safely, by the tens of thousands,” he said. He urged the FAA, other government agencies and contractors to participate in the proposed working group to focus on roughly 10 to 15 problematic missions, and explore the idea of

The hoist rescue (page 11) by the Los Angeles County Sheriff’s Department requires public aircraft operation status. International business aviation standards increasingly influence how U.S. federal agencies (above) perform safety oversight.

the FAA assuming safety oversight of just this subset of public aircraft operations.

The FAA, however, rejects the idea of overseeing any public aircraft operations. “In public aircraft operations, the sponsoring and contracting government agency is responsible for the assurance of safety of that operator,” said John Allen, director of the FAA Flight Standards Service. “We are not trained, staffed or budgeted to have the expertise to exercise appropriate oversight, but the agency that has that mission [also has the safety specialists] who would know what they are looking for and how to ensure the safety of at least that [public aircraft] operation [for] the government agency.”

Bob Galloway, director of aviation policy, General Services Administration, said, “To date [in 2011], we have had three mishaps in the federal aviation community. For our last complete calendar year of flight hours and mishaps, our mishap rate for the non-DoD [non-Department of Defense] federal aviation community was 1.65 per 100,000 flight hours ... roughly akin to the Part 135 on-demand mishap rate for the same year of 1.63.”

Civil regulations are unable to address the unique operating characteristics of natural resource missions, added Keith Raley, chief of the Aviation Safety and Programs Evaluation Division in the Aviation Directorate of the Department of Interior (DOI). “Regardless of any status as a public aircraft operation, DOI contractors must operate ‘in accordance with’ their FAA-approved [Part 135] ops specs [operations specifications] and all portions of Part 91 [general operating and flight rules]. We ask them to do everything they reasonably can within Part 135 [ops specs during public aircraft operations]

but they are not operating under the Part 135 requirements. ... If they do not do this, [they face] a contractual action, not an FAA enforcement action.” DOI contractors need public aircraft operation status only when they otherwise could not comply with their FAA Part 135 certificate or ops specs while conducting short-haul, that is, a person being extracted by a rope underneath a helicopter; rappel, a person descending from the helicopter by rope; or the aerial delivery of fire retardant in close proximity to populated areas, Raley said.

### Gaming the System

On March 23, 2011, the FAA announced a new policy directive on public aircraft operations, and later conducted industry briefings and began training FAA inspectors. Accompanied by a pending advisory circular (AC) containing a decision flow chart, the policy directs that declarations of public aircraft operation status be issued by sponsoring agencies to contractors, and that contractors furnish them to the local FAA inspector. The database of declarations, accessible to all FAA inspectors, will eliminate situations in which aircraft operators falsely or inadvertently refuse an FAA inspection or surveillance by claiming to be a public aircraft operation outside FAA jurisdiction, the FAA’s Petronis said. The policy will take about two years to implement after the AC is published.

The policy basically says “until and unless we have notice, we will consider [the operator’s aircraft] a civil aircraft and maintain full oversight [and operators will] have to comply with all the [FARs],” she said. The FAA then will be better able “to take enforcement action against people who are pretending to [conduct] public aircraft operations when they are really not,” she added.

One significant safety-oversight advance has been government agencies obtaining IS-BAO registration, said Donald Spruston, director general of IBAC. Panelists said that the Federal Bureau of Investigation in September 2010 was the first non-DoD agency to obtain IS-BAO registration, followed by FAA Flight Operations and the National Aeronautics and Space Administration. The National Oceanic and Atmospheric Administration is scheduled to undergo an IS-BAO survey in February 2012, and the Forest Service plans to undergo the survey in 2013.

Panelists speaking for several state and local agencies also touted exemplary safety records in public aircraft operations. The Air Support Division of the Houston Police Department has 40 years of service without a serious injury or death in helicopter operations, said James Waltmon, a lieutenant and pilot in the division. Nevertheless, the department is pursuing certification by the four-year-old Airborne Law Enforcement Accreditation Commission, and would be only the second police agency in the nation to begin the process.

In another example, the Los Angeles County Fire Department has had no helicopter emergency medical services accidents in 41 years of operations, said Tom Short, senior pilot for the department, which implemented a safety management system in 2011. 🌀

### Notes

1. The law is 49 United States Code 40102 (a) (41)(A)-(E), which defines public aircraft operations.
2. The law says that a qualified non-crewmember is “a person aboard an aircraft ... who is required to perform or is associated with the performance of a government function.”