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

Office of the Chief Counsel

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

AUG 26 2011

R. Scott Pomarico
Director of Aviation Programs
Office of Secure Transportation
National Nuclear Security Administration
U.S. Department of Energy
P.O. Box 5400
Albuquerque, NM 87185

Dear Mr. Pomarico:

My office is in receipt of your several emails regarding Department of Energy aircraft operations. Historically, the NNSA has contracted with civil operators to conduct its aircraft operations that include the transportation of nuclear materials and the occasional carriage of non-DOE personnel for which DOE was reimbursed.

You have indicated that the NNSA is changing its aviation operations to a system under which it will own and operate its own Boeing 737-400 airplanes. Under your own analyses, most of the flights will continue to qualify as public aircraft operations. However, there are times when DOE will be operating the aircraft in civil status. Your question is whether the 2003 interpretation would require the DOE to have either a Part 121 or a Part 135 certificate when operating as a civil aircraft, even if DOE would "not [be] engaged in commercial operations and not holding out to the public."

You reference an interpretation from the FAA dated September 2, 2003 signed by Donald Byrne that sought to clarify whether certain operations conducted by contractors for the DOE were valid public aircraft operations. Our interpretation, which was specific to the operations described, concluded that on those occasions when the DOE-contracted operator was transporting personnel and being reimbursed, the operator needed to have a 14 CFR Part 121 certificate.

You also submitted a copy of the letter request you have made to the FAA's Flight Standards District Office in Albuquerque, NM, for a Letter of Deviation Authority (LODA) from Part 125 that would be used when DOE operates the 737s as civil aircraft.

Your first question asks: *Is the intent of the [2003 interpretation] to restrict a Government Owned and Government Operated (GOGO) construct to a 121 or 135 certificate when they are not engaged in commercial operations and not holding out to the public?*

Nothing in our 2003 interpretation should be read as requiring DOE to obtain a Part 121 or Part 135 certificate to conduct civil flights not in air commerce as defined in 14 CFR Part 119. Nor should anything in the 2003 interpretation be read as requiring DOE to use a contractor for civil flights that are not in air commerce as defined in 14 CFR Part 119. If the DOE qualifies to operate its own Boeing 737 aircraft with a Part 125 LODA, it may conduct flights within that authority. Flights with DOE aircraft that are conducted as public aircraft operations must meet all of the terms of the statute for each flight, including the requirements for having a governmental function, the presence of only crew or qualified non-crew members, and that the flight does not have a commercial purpose. As I know you are aware, public aircraft operations are determined on a flight by flight basis.

Your second question asks: *Considering the NNSA operating construct as outlined in the letter submitted to the FAA, is this contrary to the 2003 Conte letter determination?*

The 2003 interpretation was specific to the facts presented at the time, when NNSA was using two civil contractors to conduct its various operations. The 2003 interpretation is not applicable to the NNSA's operation of its own aircraft when operating as a public aircraft operation, or when operated civilly but not in air commerce.

Your third question asks: *Considering the NNSA operating construct as outlined in the letter submitted to the FAA, is this an appropriate standard to which a GOGO aircraft should be operated, maintained, and managed?*

If NNSA is operating under a Part 125 LODA from the FAA, then NNSA must continue to comply with the requirements and limitations contained in its Part 125 LODA authority. Those requirements and limitations are the responsibility of the FSDO issuing the authorization and would be based on the FAA's assessment of your request. We understand that the Albuquerque FSDO may have its own concerns that will be addressed by NNSA before any LODA is issued.

As you are aware, the statutory restrictions on public aircraft operations are many, and the prohibition on commercial purposes is primary. Nothing in this interpretation may be construed as permission for the NNSA to operate flights as public aircraft operations for which it receives compensation from passengers. When persons other than qualified non-crewmembers are aboard the aircraft, the flight is a civil operation that would have to be conducted in accordance with the authority the NNSA is granted.

Further, as far as the airworthiness and maintenance of the aircraft, other approvals may be necessary before an aircraft used in a public aircraft operation may return to civil operation status under a LODA. Of primary concern to the FAA is the nature of the activity that took place when the aircraft was conducting public aircraft operations, including any activity that may have exceeded the aircraft's airworthiness certificate or operating limitations. In addition, to facilitate a return to civil operating status, the FAA suggests that DOE continue to follow the established maintenance program for the aircraft and maintain detailed records of maintenance activity while operating as a public aircraft operation. Once again, the

acceptability of your proposed maintenance programs is a matter for consideration by your FSDO rather than my office.

We apologize for the delay in getting you this response and appreciate your patience and DOE's participation in recent FAA activities regarding clarifications of public aircraft operations. This interpretation was prepared by Karen Petronis, Senior Attorney for Regulations in my office, and coordinated with the Operations Law Branch of my office, the General Aviation and Commercial Division (AFS-800) and the Air Carrier Maintenance Branch (AFS-330) of the Flight Standards Service. Please contact Karen Petronis if you have any further questions regarding this interpretation.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200