



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

Office of the Chief Counsel

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

March 4, 2022

Mark A. Dombroff
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Tysons Pointe
8300 Greensboro Drive, Ste. 1000
Tysons, VA 22102

Dear Mr. Dombroff,

We have received your letter requesting an interpretation of § 111.1(b)(5) of Title 14 of the Code of Federal Regulations (14 CFR), and we determined that this question is appropriate for legal interpretation because it is a novel question regarding a recently-promulgated regulation. You asked: must entities conducting public aircraft operations (PAO) as a contractor on behalf of a branch of the Armed Forces comply with the reporting requirements of the Pilot Records Database (PRD), given the rule's exclusion of entities that are branches of the Armed Forces in § 111.1(b)(5)? You also noted that the operator in question would not otherwise be subject to the reporting requirements of PRD.¹ After reviewing the regulation, the preamble to the final rule, and the underlying statutory authority (49 U.S.C. 44703(i)) (the PRD Act), the Office of the Chief Counsel has determined that such contractors must report records as prescribed by part 111.

Title 14 CFR 111.1(b)(5) states, “[PRD applies to] each entity that conducts public aircraft operations as defined in 49 U.S.C. 40102(a)(41) on a flight that meets the qualification criteria for public aircraft status in 49 U.S.C. 40125, unless the entity is any branch of the United States Armed Forces, National Guard, or reserve component of the Armed Forces.” This exclusion matches the relevant statutory provision at 49 U.S.C. 44703(i)(2)(B), which, in part, requires the Administrator to establish and make available for use an electronic database containing:

Air carrier and other records.—From any air carrier or other person (except a branch of the Armed Forces, the National Guard, or a reserve component of the Armed Forces) that has employed an individual as a pilot of a civil or public aircraft, or from the trustee in bankruptcy for the air carrier or person...

Title 49 U.S.C. 40125(a)(4), by reference to 10 U.S.C. 101, defines “armed forces” as “the Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard.”

¹ You also inquired about the applicability of PRD to operations with one King Air KA350 aircraft for the purpose of carrying passengers in support of business operations. Your conclusion is correct – in accordance with § 111.1(b)(4), because the operator only uses a single aircraft in support of business operations, they would not be required to report records about pilots used only in those operations.

Because the PRD Act only specifically excluded entities that are branches of the Armed Forces, its reserve components, or the National Guard, and the regulation mirrors the statute, operators who are contractors for such an entity must comply with PRD. A PAO contractor for a branch of the Armed Forces is an entity that conducts PAO as defined by statute but is not itself a branch of the United States Armed Forces, National Guard, or reserve component of the Armed Forces. Those contractors also employ individuals as pilots of public aircraft, as described in the PRD Act. The existing specificity of the exclusion in the PRD Act for the Armed Forces, its reserve components, and the National Guard supports this interpretation.

In other areas of FAA regulation, such contractors are construed as “stand[ing] in the shoes” of a government entity under a contract.”² The incoming request for legal interpretation cites the use of this language in Advisory Circular 00-1.1B. The Advisory Circular’s use of the phrase “standing in the shoes” is consistent with FAA interpretations to the extent that it identifies whether an entity is subject to applicable operating regulations and which regulations might apply. For example, in Special Federal Aviation Regulations (SFARs) at 14 CFR part 91, subpart M, the FAA permits contractors working for an agency such as the Department of Defense to receive approvals notwithstanding the applicability of the SFAR, provided the agency identifies its contractors to the FAA.³ This purpose of attributing responsibility for compliance with and applicability of regulations differs from the purpose for which the FAA would determine such contractors are subject to record reporting requirements of the PRD. Congress directed that record reporting under the PRD must occur because certain future employers must consider records regarding the pilots they might hire.

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

Sincerely,

LORELEI
DINGES PETER



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DINGES PETER
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Lorelei D. Peter
Assistant Chief Counsel for Regulations

² Advisory Circular 00-1.1B, Public Aircraft Operations – Manned and Unmanned

³ See, e.g., 85 FR 45084, 45088 (July 27, 2020) (stating the FAA will evaluate requests for approval from contractors acting on behalf of a U.S. Government department, agency, or instrumentality).



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October 15, 2021

VIA E-MAIL MARK.BURY@FAA.GOV
AND U.S. FIRST CLASS MAIL

Mark W. Bury
Chief Counsel (Acting)
Office of the Chief Counsel
Regulations Division (AGC-200)
Federal Aviation Administration
800 Independence Ave., S.W.
Washington, DC 20591

Re: Legal Interpretation Regarding 14 C.F.R. Part 111 – Pilot Records Database

Dear Mr. Bury:

We write to request a legal interpretation regarding the applicability of the FAA's Pilot Records Database (PRD) regulations to certain public aircraft operations conducted by our client, Leidos, Inc. ("Leidos"). Specifically, we seek a determination concerning whether the provisions of 14 C.F.R. Part 111 are applicable to Leidos's activities as an entity conducting public aircraft operations pursuant to contracts it has entered into with the U.S. military.

A. Factual Background

Under an existing contract with the Department of Defense/U.S. Army, Leidos currently operates a total of nine "Public and State Use" aircraft. Pursuant to this contract, Leidos provides noncommercial aviation services to the Army, including aerial mapping activities and intelligence, surveillance, and reconnaissance (ISR) monitoring. None of the flights involved in these missions carry passengers, other than those individuals assigned as essential crewmembers with Governmental Flight Representative (GFR) approval.

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All of the Leidos pilots operating the affected aircraft satisfy the rating, certificate, and experience levels required under the applicable Defense Contract Management Agency (DCMA) flight standards, and each pilot is approved by the GFR for every aircraft movement. Moreover, all crewmembers are required to hold and maintain the requisite level of Security Clearance to support the contract-mandated missions.

The Department of Defense/U.S. Army, the contracting government entity, has provided Leidos with a written, signed declaration of public aircraft status for the flights at issue, in accordance with guidance contained in FAA Advisory Circular (AC) 00-1.1B, *Public Aircraft Operations – Manned and Unmanned*, dated 9/21/18, at ¶ 9.2, calling for such a written declaration of public aircraft status for designated qualified flights. Leidos has, in turn, submitted a copy of the declaration to the Washington, D.C., FAA Flight Standards District Office, the FSDO with responsibility for oversight of Leidos’s operations. *See id.* at ¶ 9.2.1.

Leidos also operates a single King Air KA350 aircraft (N899JE). That aircraft is operated under Part 91, and is used to carry passengers in support of Leidos’s business operations. The operations of the King Air KA350 aircraft are not part of Leidos’s activities under the DOD/Army contract.

B. Pilot Records Database Regulations

FAA regulations at 14 C.F.R. Part 111 “prescribe rules governing the use of the Pilot Records Database (PRD).” 14 C.F.R. § 111.1(a). These regulations provide that Part 111 applies, *inter alia*, to the following:

(5) Each entity that conducts public aircraft operations as defined in 49 U.S.C. 40102(a)(41) on a flight that meets the qualification criteria for public aircraft status in 49 U.S.C. 40125, ***unless the entity is any branch of the United States Armed Forces, National Guard, or reserve component of the Armed Forces.***

11 C.F.R. § 111.1(b)(5) (emphasis added).¹ The term “armed forces” is defined in 49 U.S.C. § 40125(a)(4) by reference to 10 U.S.C. § 101, which provides, in relevant part, that “[t]he term ‘armed forces’ means the Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard.” 10 U.S.C. § 101(a)(4).

¹ The statute creating the PRD provides that the database shall contain certain defined records “[f]rom any air carrier or other person (*except a branch of the Armed Forces, the National Guard, or a reserve component of the Armed Forces*) that has employed an individual as a pilot of a civil or public aircraft, or from the trustee in bankruptcy for the air carrier or person . . .” 49 U.S.C. § 44703(i)(2)(B). (Emphasis added.) The reporting obligations with respect to covered air carriers or persons are set forth at 49 U.S.C. § 44703(i)(4)(B).

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C. Questions Presented

Leidos is seeking guidance as to whether the Part 111 applicability exclusion contained in 14 C.F.R. § 111.1(b)(5) with respect to an entity that is “any branch of the Armed Forces” conducting public aircraft operations applies to a private contractor hired by a branch of the Armed Forces to conduct public aircraft operations on its behalf.

In the situation presented herein, Leidos has received, as noted above, a Declaration Letter from the Department of Defense/U.S. Army establishing that the flights it conducts for the Army meet the definition of “public aircraft operations.” In addressing whether the Part 111 applicability exclusion applies to a private contractor such as Leidos, we note that the FAA itself has observed that, “[o]nce a valid PAO [Public Aircraft Operation] is established, a government entity may hire a contractor to conduct the same operation for them[,]” and that “[s]ince a contractor ‘stands in the shoes’ of the government entity under a contract, the flights must be analyzed as if conducted by the government entity.” AC 00-1.1B, *Public Aircraft Operations – Manned and Unmanned*, dated 9/21/18, at ¶ 9.13. Moreover, in its comments on the PRD final rule, the FAA “note[d] that the PRD Act specifically excludes records from branches of the Armed Forces, the National Guard, or a reserve component of the Armed Forces.” Pilot Records Database, 86 Fed. Reg. 31006, 31015 (June 10, 2021), citing 49 U.S.C. § 44703(i)(2)(B).

Applying this analytical framework to the factual situation presented herein, the flights conducted by Leidos in furtherance of its contract with the military should be viewed “as if conducted by” the Department of Defense/U.S. Army. To the extent that a particular flight “meets the qualification criteria for public aircraft status in 49 U.S.C. 40125,” and is conducted by a “branch of the United States Armed Forces,” 14 C.F.R. § 111.1(b)(5), it would appear that the provisions of Part 111 would not be applicable to such activity. Leidos respectfully seeks an interpretation as to whether its understanding in this regard is correct.

With respect to Leidos’s Part 91 operation of a single King Air KA350 aircraft for the purpose of carrying passengers in support of its business operations, such activities would also appear to be excluded from coverage under the PRD rules set forth in Part 111. Under 14 C.F.R. § 111.1(a)(4), the PRD rules are applicable to, *inter alia*, “[e]ach operator that operates *two or more aircraft* [as described in this paragraph] . . . in furtherance of or incidental to a business, solely pursuant to the general operating and flight rules in part 91 of this chapter . . .” *Id.* (Emphasis added.) Here, because Leidos operates only *one* such aircraft as described by this section, the plain language of the regulation would appear to exclude Leidos from the applicability of Part 111 insofar as its operation of this aircraft is concerned. As to these Part 91 activities, Leidos respectfully seeks an interpretation as to whether its conclusion in this regard is correct.



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ATTORNEYS AT LAW

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We appreciate your consideration of these questions. Should you have any questions or need additional information regarding the factual circumstances in which they arise, please do not hesitate to contact me.

Very truly yours,

Mark A. Dombroff