

Exemption No. 10688

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC 20591

In the matter of the petition of

PATIENT AIRLIFT SERVICES, INC.

for an exemption from part 119 and
135 of Title 14, Code of
Federal Regulations

Regulatory Docket No. FAA-2012-0158

DENIAL OF EXEMPTION

By letter dated January 31, 2012 Mr. Joseph Howley, Chairman of the Board of Directors, Patient Airlift Services, Inc. (PALS), 120 Adams Boulevard, Farmingdale, New York 11735 petitioned the Federal Aviation Administration (FAA) on behalf of PALS for an exemption from parts 119 and 135 of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption, if granted, would permit PALS, a not-for-profit volunteer pilot organization, to use a donated aircraft for transporting patients and staff to appointments or meetings by PALS staff members and volunteer pilots without having to meet the requirements of part 119 and part 135.

The petitioner requires relief from the following regulations:

All of part 119 and all of part 135

The petitioner supports its request with the following information:

The petitioner states it is a not-for-profit volunteer pilot organization (VPO) with approval from the Internal Revenue Service as a charitable organization, pursuant to Internal Revenue Code (IRC) Section 501(c)(3). The petitioner's primary purpose is to serve children, adults and humanitarian organizations by arranging free air transportation to be provided by others for access to health care and for other humanitarian purposes. The petitioner receives no compensation for such flights which it provides free of charge to persons based on their financial need and medical requirements.

AFS-12-220-E

A private party has donated an aircraft (Beechcraft Bonanza, N5463D) to the petitioner for use by the petitioner on flights for administrative purposes as well as charitable flights transporting patients and members of the military to or from distant specialized medical evaluation diagnostic services or treatment.

The petitioner believes it is in the public interest to allow it to use donated aircraft for charitable and administrative flights in the same manner that aircraft belonging to its volunteer pilots are used without being subject to the extremely burdensome and costly requirements in parts 119 and 135 that would apply to "air carriers" and/or "commercial operators."

The petitioner states that its staff members travel significant distances to meet with hospital administrators, social workers, clinics, individual physicians and patients to establish patient referral systems and relationships and to coordinate actual patient transport. The coordination with the hospital administrators, social workers, physicians and clinics is extremely important to delivering these free transportation services to patients in financial need.

PALS states that until now, its staff has been dependent on the availability of volunteer pilots and their aircraft for such trips, or has had to drive long distances, or use public transportation to attend such meetings. The use of the recently donated private aircraft could greatly facilitate the work of its staff.

PALS states that on occasion, when other aircraft are not available, a donated aircraft could also be used for a charitable flight by the petitioner. The aircraft could be piloted by the volunteer pilots who otherwise meet the petitioner's stringent criteria or by one of the petitioner's staff members if that staff member meets the same rigorous qualifications that it requires of its volunteer pilots.

The petitioner states that if the FAA were to require the petitioner to comply with parts 119 and 135 without the requested exemption, the petitioner would incur substantial expense to have the aircraft comply with requirements applicable to air carriers and commercial operators, and, in addition, the aircraft could be operated only by commercial pilots meeting the FAA requirements for such operations.

The petitioner believes the requested exemption is in the public interest, because it will greatly facilitate its ability to ensure that patients in financial need will be able to get essential medical care and to conduct other humanitarian flights.

PALS states the FAA recently granted an exemption to the petitioner from § 61.113(c) to allow reimbursement of its volunteer pilots for fuel costs incurred in conducting charitable flights. The FAA exemption recognized that the humanitarian efforts of volunteer pilot organizations are commendable, and historically, the FAA has tried to encourage this kind of volunteerism and public service for the common good.

Similarly, an exemption to allow the use of donated aircraft by its volunteer pilot organization will increase the ability of the petitioner to carry out its charitable and humanitarian works, and, at the same time, ensure that such flights are conducted with enhanced aviation safety as a result of the petitioners extremely stringent requirements for its pilots.

Flights arranged by the petitioner are dedicated to charitable purposes with a demonstrable public benefit. Examples of charitable flights by the petitioner include, but are not limited to, the transport of patients and escorts to distant specialized medical facilities or places of care and rehabilitation. The petitioner also helps families of servicemen, i.e., either transporting family members or servicemen to each other during the course of servicemen's medical care. The petitioner's pilot must note in his or her flight log the charitable purpose of the flight.

The petitioner contends that other than fuel reimbursement payments to volunteer pilots in accordance with Exemption No. 10294, no payments of any kind are ever made to PALS to any of its volunteer pilots, or to any other party or entity for the conduct of the flights facilitated by the petitioner.

The petitioner states that since it proposes to operate a donated aircraft only with pilots who meet the high standards established for its operations, it would augment a culture of safety and increase documentation of pilot and VPO compliance with safety mandates. The petitioner states that by granting the requested exemption, the FAA will further promote its safety and regulatory objectives through our volunteer pilot organization.

A summary of the petition was published in the Federal Register on June 25, 2012 (77 FR 37952). One comment was received in support of a grant of exemption.

The FAA's analysis is as follows:

The FAA has reviewed the petitioner's request and finds that a grant of exemption would not be in the public interest and would not provide an equivalent level of safety as that provided by the current regulations.

In the PALS request, it proposes to provide free air transportation for charitable and administrative flights. The petitioner would use volunteer pilots and staff pilots to conduct the flights using an airplane it owns and third parties would donate money to the charity to cover flight expenses. In addition, these pilots would log the flight hours, but would not take a tax deduction for the donated time.

The charity cannot operate under part 91 because the arrangement would constitute a commercial operation for which a part 119 certificate is required. Section 1.1 defines a commercial operator as a person who, for compensation or hire, engages in the carriage by aircraft in air commerce of persons or property. Where it is doubtful that an operation is for

compensation or hire, the test applied is whether the carriage by air is merely incidental to the person's other business or is, in itself, a major enterprise for profit.

The FAA construes "compensation or hire" very broadly. It does not require a profit, a profit motive or the actual payment of funds. Instead, compensation under the FAA's view is the receipt of anything of value. Thus, compensation for the flights as proposed would exist in two forms. First, the expenses associated with the flight would be paid by donors to the charity, not the individual pilot; and second, the pilots would acquire flight hours at the charity's expense — flight hours that could be used to demonstrate aeronautical experience eligibility for an airman certificate. These forms of compensation are sufficient to require the operator to have a part 119 certificate.

The FAA has previously stated that a company organized solely for the purpose of owning and operating aircraft to transport people or property for compensation or hire must have an air carrier operating certificate because the air transportation provided by the company is not "incidental" to the company's business.

Thus, the practical effect is that the aircraft and crew used in the air transportation are both provided by the same company, which is effectively a flight department company operation that cannot be conducted under part 91.

The proposed operations are distinguishable from the FAA charitable airlift exception. Under that exception, flights conducted by private pilots and offered to the public by a charitable organization in exchange for donations may be operated under part 91 if they do not involve the point-to-point transportation of persons or property, which would implicate the requirements of part 119. For example, under the charitable airlift exception, the passengers are flown around for a brief period of time, and then returned to the point of origin; whereas in the petitioner's proposal, the passengers would be flown from point A to point B. Since the flights would involve point-to-point transportation for compensation, a part 119 certificate is required.

The petitioner also stated that current flights for patients are conducted under part 91, but again, these types of flights are distinguishable from your proposed operations. It is true that some the petitioner's flights are permitted to operate under part 91, and are allowed to accept donations from the public. However, these organizations use the services of pilots who donate their time and aircraft. In addition, the public donations made to these organizations are not used to pay the pilots but to reimburse fuel expenses. Therefore, the flights are not being conducted for compensation, and are not required to comply with part 119.

The humanitarian efforts of many individuals in the aviation community are laudable, yet the need to maintain the highest level of safety for commercial operations remains. Accordingly, the FAA believes that the interests of safety are best served by requiring operations conducted for compensation or hire to be conducted under parts 121 or 135.

The FAA finds that the petitioner's petition for exemption from part 119 and part 135 is not in the public interest. This exemption would permit pilots who have not received part 135 training or checking to fly a company airplane that has not been maintained to part 135 standards to carry passengers.

The FAA's Decision:

In consideration of the foregoing, I find that a grant of exemption would not be in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701, delegated to me by the Administrator, the petition of Patient AirLift Services, Inc., for an exemption from 14 CFR parts 119 and 135 is hereby denied.

Issued in Washington, DC, on January 23, 2013.

/s/

Michael J. Zenkovick
Acting Director, Flight Standards Service