FLIGHT-WATCH

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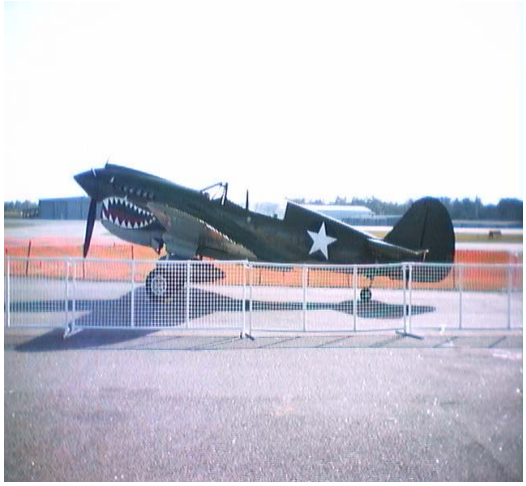

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THE RELATIONSHIP BETWEEN PART 91, SUB-PART F AND LETTERS OF DEVIATION AUTHORTY UNDER PART 125 OF THE FEDERAL AVIATION REGULATIONS

I.

A STATEMENT OF THE ISSUES PRESENTED

FAA Interpretation 2006-5 issued by the Assistant Chief Counsel for the Regulations Division of the Federal Aviation Administration on June 14, 2006, is of interest to operators of aircraft having 20 or more seats or with a maximum payload capacity in excess of 6,000 pounds where a parent corporation and a subsidiary corporation both employ the aircraft in transporting their officers, employees or guests incident to their corporate business activities.

A casual reading of Federal Aviation Regulations §91.501(b)(5) suggests that a corporation operating a large, turbine-powered multi-engine aircraft may do so without obtaining an air carrier certificate issued under Part 135 of the Federal Aviation Regulations. Superficially, a reading of the regulations suggests that a corporation may provide transportation to its officials, employees, or guests of the company on an airplane operated by that company or on an airplane operated by a subsidiary of that company. The language of the regulation further suggests that a parent corporation can provide transportation for a subsidiary corporation in relation to the subsidiary's officials, employees, guests and property of the subsidiary. The regulation stipulates, however, "… no charge, assessment or fee is made for the carriage in excess of the cost of owning, operating, and maintaining the aircraft, except that no charge of any kind may be made for the carriage of a guest of a company when the carriage is not within the scope of, and incidental to, the business of that company." To further complicate an understanding about how parent and subsidiary corporations may operate an aircraft, the regulation further stipulates that it applies so long as it does not involve transportation by air. The implication of this language is that if an air traffic certificate were required, then the safe harbor of Federal Aviation Regulations §91.501(b)(5) would not apply.

What happens if a parent corporation owns a Boeing 727 and operates the aircraft under a Letter of Deviation Authority ("LODA") from Part 125 dealing with aircraft having more than 20 seats or a maximum payload

capacity of 6,000 pounds or more? Furthermore, what happens if a subsidiary corporation of the parent does not have a LODA? Answers to the questions presented by this fact pattern appear in FAA interpretation 2006-5.

II.

ANALYSIS

According to FAA Interpretation 2006-5, merely because an operator is operating under Part 91, Subpart F, does not excuse the operator from complying with Part 125 if the aircraft has more than 20 seats or has a payload capacity of 6,000 pounds or more. According to the FAA, Part 125 of the Federal Aviation Regulations was implemented to ensure that all "commercial operations" conducted in Part 125 aircraft

satisfy the requisite safety requirements of that regulation.

According to FAA Interpretation 2006-5, the mere fact that an aircraft is operated under Subpart F with the limitations on fees and charges set forth in §91.501(b)(5) does not mean that the operations are not "commercial operations." The FAA takes the position that operations under Subpart F of Part 91 of the Federal Aviation Regulations are "commercial operations." However, §91.501(b) merely allows the operators to conduct commercial operations without obtaining a commercial operating certificate. Based upon this logic, the operation of an aircraft satisfying the criteria of Part 125 of the Federal Aviation Regulations would still be subject to Part 125 even though it was operated under Subpart F of Part 91.

The definition of "operations not involving common carriage" is set forth in §119.3 and includes (1) non-common carriage, (2) operations in which persons or cargo are transported without compensation or hire, (3) operations not involving the transportation of persons or cargo, and (4) private carriage. Accordingly, operations under §91.501(b)(5) are, according to the FAA, "commercial operations" that involve "operations not involving common carriage."

In relation to whether a parent corporation possessing a Letter of Deviation Authority from Part 125 may provide transportation to the officials, employees or guests of a subsidiary corporation, the short answer is no, unless the aircraft was going to be flown from the parent corporation anyway and the trip was not for the benefit of the officials, employees or guests of the subsidiary corporation. In order to have full flexibility in the use of the aircraft as set forth in §91.501(b)(5), not only must the parent corporation have a Letter of Deviation Authority from Part 125, but the subsidiary corporation must satisfy those requirements as well. The Letter of Deviation Authority issued to the subsidiary corporation should exempt it from complying with specific provisions of Part 125 but should not provide a full or

blanket deviation from the entire rule. The Letter of Deviation Authority issued to the subsidiary corporation should limit it to "non-commercial operations where no compensation of any kind is received, including reimbursement for operating costs." The Interpretation goes on to recite that the Letter of Deviation Authority "should also reflect that the carriage of any guests on the airplane must be limited to flights conducted solely [for the subsidiary corporation's] business purposes."

III.

CONCLUSION

FAA Interpretation 2006-5 is an interesting study in the analysis of how the FAA construes and interprets the regulations and the relationship between Subpart F of Part 91 and Part 125 of the Federal Aviation Regulations.

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Alan piloting the Kate during the Greater Georgia Air Show—10/15/06

Photo Courtesy of Neil Estes