

**United States
Department of
Agriculture**

Forest Service R-6

OR/WA

**Bureau of Land
Management**

**United States Department of
Interior**

Reply Refer To: 5700 (FS)/ 9470 (BLM) (OR-934) P

Date: March 20, 2003

FS-Memorandum

**EMS TRANSMISSION 03/24/2003
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To: Forest Service Forest Supervisors and Bureau of Land Management
District Managers
ATTN: Fire Management Officers

Subject: Memo on Employee Responsibility and Policy Compliance in Aviation Activities

As we continue to seek integrated solutions to complex issues, we build upon the past success of combining expertise and resources with other agencies having similar programs. Our employees are experiencing an increase in requests to assist, or participate, in projects with a multitude of cooperators. We are very eager to lend a helping hand, and often go out of our way to assist other programs and agencies. This commitment from our employees is well intended, however, as prudent managers, we must insure that our individual agency's policy and regulations are maintained. The safety of everyone is our number one priority.

The use of government vehicles, including aircraft, is a vital part of managing our resources. We have clear direction and policy on how we use aircraft to support our needs. At times, our employees are asked to participate in aviation operations that feature equipment and pilots that do not meet our minimum standards. Agency manuals and directives give us clear policy prohibiting our employees from riding in unapproved aircraft and/or with unapproved pilots. Occasionally senses of urgency to help others causes an employee to react by volunteering their time, or perform some service during off-duty hours. These employees have their heart in the right place, but can incur serious problems if they do not comply with agency guidelines and federal standards of ethical conduct. A common misconception of government employees is if they are in leave status, they are free to do anything they please. They mistakenly feel the regulations only apply while they are on duty and performing their normal duties. The rules still apply! Aviation is one specific area of our program where this misconception can be a very costly mistake.

Unit Aviation Officers, Aviation Technical Representatives from the Regional Aviation Group, Office of Aircraft Services, and State Office/Regional Office Managers are available to assist field offices in planning, conducting, and payment for aircraft use. With advance notice, these aviation management personnel can complete a process to insure our minimum standards for safe flights with cooperators are met. The key to the success of this program is allowing the aviation management personnel the opportunity to complete this process.

Employees, who think they may encounter cooperator aviation activities, should contact their Unit Aviation Officer or personnel manager immediately to determine what is allowed.

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Specifically, they need to determine when they are representing the government, both on duty and off duty. They also need to know their rights when acting as a volunteer for the government.

Many official documents stipulate what you, as an official for the U.S. Government, can and cannot do. Many of the issues deal with personnel policy as opposed to aviation policies. This bulletin is intended as a cautionary note to serve as a heads up to potential problems. Aviation rules and regulations fill volumes of manuals, technical reference guides, agency personnel regulations and conduct, and ethics regulations. The simplest path to follow, if you are going to be involved with aviation, is to contact your Unit Aviation Officer. This individual has the experience and expertise

to provide you with the necessary information needed to complete your mission. Technical expertise can also be obtained at Regional Aviation Group or the Office of Aircraft Services.

The attached references provide examples of situations you may encounter. If you have questions, please call Jon Rollens at 503-808-2359 or Clay Hillin at 503-808-6593.

/s/ Laurie Perrett
LAURIE PERRETT
Director, Fire and Aviation Management Forest Service
Region 6

/s/ Leo Sidebotham
LEO SIDEBOTHAM
Chief, Bureau of Fire and Aviation Management
Bureau of Land Management
State Office

Authenticated by
Mary O'Leary
Management Assistant

1 Attachment(s)

1 - [Manual Reference and Questions and Answers](#) (7 pp)

BLM Distribution
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Information for Supervisors and Employees Regarding Aviation Operations

Our employees are experiencing an increase in requests to assist, or participate, in projects with a multitude of cooperators from the private sector, the military and other state and federal agencies. Most employees are very eager to lend a helping hand and often go out of our way to assist other programs and agencies. These employees have their heart in the right place, but can incur serious problems if they do not comply with agency guidelines and federal standards of ethical conduct. This commitment from our employees is well intended, however, as prudent managers; we must insure that our individual agencies policies and regulations are adhered to.

Occasionally, a sense of urgency to help others causes an employee to react by volunteering their time, or perform some service during off-duty hours. A common misconception of government employees is if they are in leave status, they are free to do anything they please. They mistakenly feel the regulations only apply while they are on duty and performing their normal duties. This is not so! Aviation is one specific area of our program where this misconception can be a very costly mistake.

The safety of employees is our number one priority. The use of government vehicles, including aircraft, is a vital part of managing our resources. We have clear direction and policy on how we use aircraft to support our needs. At times, our employees are asked to participate in aviation operations that feature equipment and pilots that do not meet our minimum standards. Agency manuals and directives give us clear policy prohibiting our employees from riding in unapproved aircraft and/or with unapproved pilots.

Unit Aviation Officers, Aviation Technical Representatives from the Regional Aviation Group, Office of Aircraft Services, and State Office/Regional Office Aviation Managers are available to assist field offices in planning, conducting, and payment for aircraft use. With advance notice, these aviation management personnel can complete a process to insure our minimum standards for safe flights with cooperators are met. The key to the success of this program is providing aviation management personnel the opportunity to complete this process.

Employees, who think they may encounter cooperator aviation activities, should contact their Unit Aviation Officer, or personnel manager, immediately to determine what activity is sanctioned by their respective agency. Specifically, they need to determine when they are representing the government, both on duty and off duty. They also need to know their rights when acting as a volunteer for the government.

Many official documents stipulate what you, as an official for the US Government, can and cannot do. Many of the issues deal with personnel policy as opposed to aviation policies. This Bulletin is intended as a cautionary note to serve as a heads up to potential problems. Aviation rules and regulations fill volumes of manuals, technical reference guides, agency personnel regulations and conduct, and ethics regulations. The simplest path to follow, if you are going to be involved with aviation, is to call your Unit Aviation Officer. This individual has the experience and expertise to provide you with the necessary information needed to complete your mission. Technical expertise can be obtained at Redmond Aviation Group or the Office of Aircraft Services.

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Attached are references and examples of situations you may encounter. If you have any questions, please contact your local UAO or the R6 Regional Aviation Officer (RAO), John Rollens at (503) 808-2359, or the Oregon/Washington BLM State Aviation manager (SAM) Clay Hillin at (503) 808-6593.

I. Manual Reference

Please refer to the regulations regarding off-duty aviation activities in accordance with the Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. Part 2635)

A. §2635.802 Conflicting outside employment and activities

An employee shall not engage in outside employment or any other outside activity that conflicts with his official duties. An activity conflicts with an employee's official duties if it is prohibited by statute or by an agency supplemental regulation; or if, under the standards set forth in §§2635.402 and 2635.502, it would require the employee's disqualification from matters so central or critical to the performance of their official duties that the employee's ability to perform the duties of their position would be materially impaired.

B. §2635.803 Prior approval for outside employment and activities

When required by agency supplemental regulation, an employee shall obtain prior approval before engaging in outside employment or activities. Where it is determined to be necessary, or desirable, for the purpose of administering its ethics program, an agency shall by supplemental regulation, require employees or any category of employees to obtain prior approval before engaging in specific types of outside activities, including outside employment.

Note: Any requirement for prior approval of employment or activities contained in any agency regulation, instruction, or other issuance in effect prior to the effective date of this part shall constitute a requirement for prior approval for purposes of this section for one year after the effective date of this part until issuance of an agency supplemental regulation, whichever occurs first.

II. References

U.S. Forest Service:

Forest Service Manual 5720.3.1 Ensure that Forest Service (FS) aviation programs and operations comply with applicable Federal and State laws, regulations, and standards for aviation safety and for reporting and investigating accidents and incidents (FSM 5700, 6700).

Forest Service Manual 5720.3.4 Do not use pilots or aircraft not properly approved for FS missions.

Department of Interior Manual (DM) 350 Chapter 4

4.3 Military Aircraft. The intent is to insure, to the maximum extent possible, that agency missions are accomplished and Government policy regarding non-competition with private enterprise is adhered to in all instances.

A. Authority. The use of military aircraft is subject to the limitations of Department of Defense (DOD) Directive 4500.9, DOD Directive 4515.13, Department of Transportation (DOT) Manual 6050.1, U.S. Coast Guard Manual M3710.1, DOI Manuals 347 DM 9, 350-354 DM, as appropriate, and appropriate OAS OPMs.

B. Policy. The following policy is established and is consistent with or specifically required by the above references.

(1) OAS shall be responsible for making final determination as to availability of commercial resources.

(2) Cost factors are not considered justification for use of military aircraft in lieu of available commercial sources. Essentially, if commercial sources are reasonably available and capable of performing the mission, the commercial source shall be used.

Bureau of Land Management Manual 9400:

A. .06 Policy

The Bureau of Land Management (BLM) Policy prescribes that, except during life threatening emergencies:

- a) All flight operations using Government owned, contracted, or chartered aircraft will be accomplished with safety as the prime consideration.
- b) Personnel performing aviation functions shall meet the requirements of the Department Manual (DM) and recognized Bureau Standards.

B. .23 Office of Management and Budget (OMB) Circulars

The OMB Circulars A-76, A-126, and A-123 prescribe procedures for acquisition and management of aircraft, and for the elimination of fraud, waste, and abuse in the utilization of aircraft. The BLM shall judiciously follow these procedures as specified by Departmental policy.

- c) OMB Circular A-123, Internal Control Systems The OMB Circular A-123 defines policies and procedures to prevent fraud, waste and abuse in Government. Aviation is listed as a high risk activity. Internal controls within the BLM aviation program will address aviation activities in this context.

C. .42 Special Use Flight

Special-Use flights (as defined in 350 DM 1.4) require an approved Special Use Plan. One-time special use missions may use the reverse side of the Form 9400-1a for this purpose.

D. .43 Exemptions/Waivers

Exemptions/waivers to Federal Aviation Regulations and DOI regulations must be requested in writing through the Aviation Program Leader from the Director, OAS.

E. .44 Dispatch

All flights supporting BLM missions, other than scheduled commercial air carrier flights or those exempted for under cover law enforcement use will be approved by the appropriate authority, prior to use.

a) Preflight Actions/Flight Plans

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- 1. All BLM flights shall be authorized and documented prior to takeoff.
- 2. All BLM flights shall use approved pilots and aircraft as directed by DM.
- 3. All persons aboard special-use flights shall be pre-approved

b) Flight Following

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Flight following is the knowledge of the aircraft location and condition with a reasonable degree of certainty such that, in the event of mishap, the survivors may be rescued.

F. .66 Passengers

c) Volunteers

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Volunteers, when traveling on official business, are official passengers, within the terms of 350 DM 1.7 A and must have applicable safety training. Volunteers are not permitted to operate or serve as aircrew member on any DOI aircraft; be aboard a BLM aircraft during any special-use-mission; be reimbursed for the operation of personal aircraft while on official business nor will they transport any BLM employee in a personal aircraft.

G. .84 Accident/Incident Investigation

Accidents involving aircraft owned, operated, or exclusively used in support of BLM programs, require investigation or review.

QUESTIONS AND ANSWERS

The following are some of the most common questions and comments that Unit Aviation Officers deal with:

Comment: I can do whatever I want to on my own time, including fly with whomever I want for whatever purpose I choose.

UAO: As long as a federal employee does not cross the line from leisure flying into job related tasks, they may participate in whatever aviation activity they choose.

Question: The aircraft that the cooperator has is not carded by either OAS or the USFS. If I participate on my own time, either on annual leave or the weekend, is this OK?

UAO: Here is the question to ask yourself: Is the flight directly related to my job? If your answer is yes, then do not participate. If you are gathering data for your agency, your status is that of a volunteer. Volunteers are not allowed to participate in aviation activities, with a few exceptions. Those that are allowed must have Line Officer

approval. Line Officers normally will not authorize volunteers to participate in flights or tasks that fit the high-risk category. Annual leave or volunteer status does not remove your federal status, nor the policies associated with your employment.

Comment: If I have an accident on my own time, while working with a cooperator, what concern is it of my employer?

UAO: A number of issues are raised. The fact that you are working with a cooperator is usually the first indication that this is official business. Usually, the reason for your involvement is the fact that you are working on a joint project. In the eyes of the courts, you are an official federal employee. You could be considered an "official air-crewmember" in legal terms. As such, your employer is legally liable for your actions, unless you have deviated from agency policies, which could place your actions outside the scope of your employment, and therefore, you're on your own and possibly liable for any actions associated with the activities. The really interesting aspect is the fact that most personal insurance policies will not cover aviation activities outside of general air carrier (The airlines). This means you may not have insurance coverage by your personal insurance company, or by the government, in the event of an accident. If your involvement with the cooperator was related to your official duties and the flight may not have occurred unless you participated, the vendor can submit claims against the Government. This may be of interest to your immediate supervisor since he/she is the individual who will be appearing in court. Another aspect of the risk to you is the ability of the cooperator to take your estate to court to recoup damages. Your family could be left with a large bill. Consider the ramifications.

Comment: It takes forever to fill out the forms, and all I want to do is fly for about one hour.

UAO: The aviation project plan only takes about 15 to 30 minutes to fill out the first time, and about 5 to 10 after that. If there are portions that you do not have the information needed, give your UAO a call and he/she will provide any necessary assistance. Agency aviation policy (both FS and BLM) stipulates that an aviation project plan, with a risk analysis and official approvals, will be in place prior to mission flights taking place.

Question: What is the process used to approve cooperator aircraft and how long does it take to accomplish? I want to fly tomorrow morning.

UAO: Most cooperators are not reimbursed or paid by us for their services. A slightly different approach is taken when using cooperator aircraft. An aircraft card and pilot card is not issued. A letter of approval is issued to the cooperator, provided that both aircraft and pilot meet the same standards as any other approved/carded operator. This process can take anywhere from one week to a month depending on the schedule of the cooperator and the OAS or USFS inspectors. There is no guarantee that the cooperator will pass inspection for any number of reasons. You need to contact the UAO as soon as possible, so that the chain of events that are necessary for your aviation project can be completed prior to your desired start date.

Question: I own my own plane. Can I fly to an agency meeting and be reimbursed for my expenses? Can I take two of my co-workers with me?

UAO: You may only fly your personal airplane on official business if you have; 1) written approval from the Regional Aviation Officer in accordance with FSM 5712.15, (Private pilot certificate, 200 hours PIC, etc), and 2) an approved travel authorization for this type of travel for Forest Service employees, or for BLM employees, 1) comply with the requirements of 351 DM 3.1 (Commercial pilot certificate, instrument rating, 500 hours PIC, annual check-ride by OAS, etc.) , and 2) have a travel authorization that does not restrict this mode. In addition you will also need your supervisor's approval for this travel, as there will always be budgetary concerns. The Forest Service does not

allow anyone other than the pilot on these flights, BLM does allow other passengers, hence the higher requirements. These individuals should also check with their insurance carrier for any business exclusions within their policies.

Question: My friend has a super-cub that he uses for recreational use. Can I fly with him over the forest to look for fishing spots?

UAO: Have fun! Just remember, this is for you and not for your job. If you have a job as Fisheries Biologist, you may want to look closely at why you are flying. If the flight is purely for your recreational enjoyment, have a good one.

Question: I am a pilot for the agency. I am also a flight instructor with my own plane. Can I instruct commercially?

UAO: With proper prior approval for the outside activity, yes. Although the association with your job, as a pilot for the agency, seems tied to your outside activity, your customer would still be seeking instruction whether you work for the agency or not. Your instructor rating is not tied to your official position description, nor is it tied to your official aviation activities. As long as you do not promote your business at work, or solicit business at your official work site, the two will remain separate.

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Question: My friend is in the military and says he/she could acquire a large helicopter for the day. They will write off the flight time to a "training mission". Can we utilize the helicopter to lift a heavy object for my project?

UAO: Agency policy prohibits federal agencies from utilizing military assets, with the exception of Drug Enforcement, Rescue and Emergency Fire Operations. There are very specific requirements that must be adhered to prior to utilizing military assets. Federal agencies cannot utilize military assets for fire operations, unless all private sector aircraft have been utilized. Rescue operations must be coordinated through the sheriff's office, who then request approval through the Office of Emergency Management. Drug Operations are very specific operations such as the marijuana plant eradication operation, not single operations that are spur of the moment. The bottom line is, federal agencies are prohibited by law from utilizing military assets that compete with private industry. If a military asset is acquired, without proper approvals, the requesting unit can be held accountable for the costs. The costs for military assets can actually be higher than private industry. Personnel who are responsible for acquiring military assets without proper approval, are outside the scope of their employment and can be held accountable.

Question: The military helicopter will not cost anything; I do not have a budget to support an expensive helicopter, why can I not utilize the military helicopter when they need training anyway? This does not make any sense and the aviation rules are ridiculous.

UAO: The policies associated with utilizing military helicopters have nothing to do with aviation rules. The monetary considerations that effect private industry are governed and protected by congress. If we were allowed to use military assets, the private sector would feel the effects in short order. The rules governing the use of military aircraft is based on the impact to private industry and the role the military has been given by congress.

Additional Information regarding military pilots:

UAO: Military helicopter pilots are trained for very specific military missions. Missions flown by the military at low density altitudes (sea level) verses missions flown by the agency that fit the definition of "special use" at high

density altitudes, requires special pilot skills that the military pilot may or may not have acquired in the military arena. Many units in the military train for high-density altitude operations, but many do not. Vertical reference work, (long-line external load) is a specialized operation that few military units train for. (The military actually contracts to the private sector for pilots and aircraft that specialize in external load operations). Military operations are no different than the civilian world in that specialized operations are handled by specialized units. Not all units are capable of all tasks. The reason for checking military pilots credentials is to verify that the expertise is in place to safely operate in the environment that the agency personnel are requesting the aircraft and pilot operate. The only personnel in our organization that can make the determination as to a military pilots qualifications are the agency helicopter inspector pilots. As a note, military pilots are not required to acquire a civilian pilots license and they cannot fly civilian aircraft until they acquire the civilian license.