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BUREAU OF LAND MANAGEMENT
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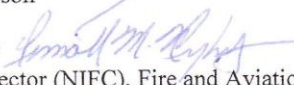


In Reply Refer to:
9400 (FA500) P

JUN 14 2011

Memorandum

To: Assistant Director, Renewable Resources and Planning
Attention: Ed Roberson

From: Timothy M. Murphy 
Acting Assistant Director (NIFC), Fire and Aviation

Subject: Guidance regarding distance of helicopter operations from persons and property during Wild Horse and Burro gather operations.

The Bureau of Land Management (BLM) is committed to conducting operations in a transparent manner, allowing access by interested members of the public to the fullest possible degree without compromising safety or the success of operations. Participation by the public allows the chance for BLM to demonstrate our capabilities. Also, participation by the public through observation of ground and air operations and sharing constructive feedback provides BLM with the opportunity to continually adjust and improve our operations.

When helicopters are utilized in conjunction with an End-Product contract for Wild Horse and Burro (WH&B) operations they are operated as "civil" aircraft and the Bureau of Land Management (BLM) will not dispatch, direct, nor exercise any operational control of the helicopter (reference Operational Procedures Memorandum 06-35). For a civil aircraft operation, the aircraft operator is required to be in compliance with 14 CFR Part 91 of the Federal Aviation Regulations (FAR's) and any regulatory issues would be between the Federal Aviation Administration (FAA) and the aircraft operator.

However, there are other aircraft acquisition instruments available to the Bureau for conducting aerial herding or capture operations. Both the following aircraft acquisition methods require Bureau operational control and accordingly all Bureau aviation policy and procedures would apply. Departmental Manual 351 DM 1.1 as well as BLM 9400.13 requires that aircraft operations comply with all FAR's except as noted in the Departmental Manual or exempted by the Associate Director, Aviation Management Directorate. There is no specific Departmental or Bureau aviation policy that addresses the distance a helicopter must remain from personnel.

- Exclusive-Use aircraft contracts. This type of procurement involves formal contracts which secure aircraft for a specific activity, a specified length of time and based in a specific location. The measure of payment for exclusive-use aircraft services is typically based on a daily availability and hourly flight rate. During the exclusive-use period, the contractor must respond and be available exclusively to the government. The contractor is guaranteed daily availability payments during the exclusive-use period. Bureaus may request exclusive-use contracts when they have a large project or recurring need and expenditures will exceed \$25,000; therefore, Bureau funding must be assured and stable. Aircraft utilized under WH&B exclusive-use contracts may be used for all WH&B aviation operations.
- DOI On-Call WH&B helicopter contract. Currently there is a WH&B On-Call helicopter contract available to DOI. This contract has five vendors and is in the final year of a four year contract. The measure of payment for aircraft services under the WH&B On-Call Helicopter contract is an hourly Flight Rate. There is no exclusive use period with On-Call contracts. Services are ordered as needed during the contract period but there is no obligation for the government to place orders, nor is the contractor obligated to accept an order. Once an order is accepted, the contractor must perform and a minimum guarantee applies for the period of use. On-Call contracts are utilized when dates of use, amount of use and funding are uncertain to the Bureau.
 - The current On-Call WH&B contract states in B 20, Flight Operations:

“Regardless of any status as a public aircraft operation, the Contractor must operate in accordance with their approved FAA Operations Specifications and all portions of 14 CFR Part 91 (including those portions applicable to civil aircraft) and each certification required under Section B2 unless otherwise authorized by the CO.”

The Part 91 FAR that directly addresses the distance an aircraft must maintain from persons and property is 91.119:

91.119 Minimum safe altitudes: General.

Except when necessary for takeoff or landing, no person may operate an aircraft below the following altitudes:

- (a) Anywhere. An altitude allowing, if a power unit fails, an emergency landing without undue hazard to persons or property on the surface.*
- (b) Over congested areas. Over any congested area of a city, town, or settlement, or over any open air assembly of persons, an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft.*
- (c) Over other than congested areas. An altitude of 500 feet above the surface, except over open water or sparsely populated areas. In those cases, the aircraft may not be operated closer than 500 feet to any person, vessel, vehicle, or structure.*

(d) Helicopters, powered parachutes, and weight-shift-control aircraft. If the operation is conducted without hazard to persons or property on the surface—

(1) A helicopter may be operated at less than the minimums prescribed in paragraph (b) or (c) of this section, provided each person operating the helicopter complies with any routes or altitudes specifically prescribed for helicopters by the FAA; and

(2) A powered parachute or weight-shift-control aircraft may be operated at less than the minimums prescribed in paragraph (c) of this section.

[Docket No. 18334, 54 FR 34294, Aug. 18, 1989, as amended by Amdt. 91-311, 75 FR 5223, Feb. 1, 2010]

There is wide latitude within 91.119(d)(1) to operate a helicopter at less than minimum prescribed distances. The interpretation of compliance with FAR 91.119, for both end-product and BLM controlled operations, resides with the pilot. Ultimate responsibility for public access, balanced with the need for adequate safety measures, must be determined by the line manager or designee, in consultation with the pilot.