November 23, 1990

Mr. Gerald L. Naekel
President, Aviation Records, Inc.
P.O. Box 172
Battle Ground, Washington 98604

Dear Mr. Naekel:

This is in response to your letter of April 26, 1989, requesting a legal interpretation of FAR 135.19, Emergency Operations. We apologize for the delay in responding to your request.

You ask for some help in defining the word emergency.

The scenario you posed:

> FIRE FIGHTING - Wind fires in the western states have endangered both lives and property. The great Yellowstone fire is an example. My client operators, and I, are under the understanding that efforts, on an interim emergency basis, would be subject to the exemption suggested by reading FAR 135.19. Is this correct?

You further narrow your question to the following:

> If called upon to assist with a forest fire that endangers life and/or property, can the Air Carrier operator respond even if certain FAR 135-rules cannot be complied with? Our assumption (we would appreciate your input) is that operations would be conducted under standards more aligned with FAR 91 operations and never suggesting that conditions of un-airworthiness, excessive loads, etc., not allowed under FAR 91, could be conducted.

We are not able to give you an opinion on the circumstances described in your letter because we would need to know the specific facts under which you were "called upon to assist with a forest fire," exactly how you deviated, and the reasons therefore. However, in the hope that we can be of as much help to you as possible, we provide the general guidance, which follows.

A "bona fide" emergency situation must have existed at the time of any deviation from the regulations. Upon receipt of the report required by FAR § 135.19(c), the Flight Standards District Office (FSDO) charged with the overall inspection of the certificate holder will then determine the validity of such emergency and whether the deviation was necessary to meet the emergency. We cannot, by way of legal interpretation, define a valid emergency, as that determination will be made by the FSDO after the required report is received. The determination is dependent upon the specific facts.

In trying to afford as much general guidance as possible, we can advise that the legislative history of FAR § 135.19 does mention natural disasters and major fires as situations where emergency deviations might be warranted. However, to reiterate, the validity of any emergency and whether the deviation was necessary to meet the emergency will be decided, after the fact, by the local FSDO.

Operators will not be permitted to use the emergency provisions as an excuse for failing to comply with the regulations. We must caution that if upon review of the report required by § 135.19(c), it is the FAA's opinion that the deviation was not justified, and then enforcement action is possible.

We hope this will prove helpful to you. Thank you again for your patience.

Sincerely,

Donald P. Byrne
Assistant Chief Counsel
Regulations and Enforcement Division