Oct 10, 1991

Mr. M. J.
Kearns
[redacted]

Dear Mr. Kearns:

This is in response to your April 11, 1991, letter to Kenneth Quinn, Chief Counsel of the Federal Aviation Administration (FAA). Your letter inquired about the FAA Administrator's delegation of his authority to grant waivers under Federal Aviation Regulations (FAR) section 91.903 (formerly section 91.63).

In FAA Order 1100.5c, FAA Organization -- Field, paragraph 253(d)(2), the Administrator has specifically delegated his authority to grant or deny waivers of Part 91 of the FAR to each of the Regional Air Traffic Division Managers, as specified in FAA Order 7711.1. Waivers which authorize the conduct of aerial demonstrations or air races are specifically accepted from this delegation. This document also gives Regional Division Managers the power to re-delegate this authority. To determine whether the authority to grant waivers of the provisions of Part 91 have been re-delegated by a particular Regional Air Traffic Division Manager, you should contact the Regional Office in that Region.

The revised organizational structure of the FAA was described in the Federal Register on September 25, 1989. This Final Rule made changes to the FAR to reflect the agency-wide reorganization completed at that time. The citation for this Final Rule is 54 FR 39288 (1989). In addition, the FAA Order by which the reorganization was accomplished is available to the public at the Document Inspection Facility.

As to the delegation of authority, it is the understanding of the FAA that the Administrative Procedure Act (5 U.S.C. section 551 et seq.) does not require all delegations of authority to be published in the Federal Register. Courts have ruled that a delegation of authority that neither alters the steps a party needs to take to present a matter to the agency or adversely affects a member of the public is not subject to the reporting requirement of section 552(a) (1)(D). (See Chevron *Qj1 Q. M.* Andrews,, 588 F.2d 1383 (5th Cir. 1979), reh. den. 591 F.2d 1343, cert. den. 444 U.S. 879; Hogg y. United, States, 428 F.2d 274 (6th Cir. 1970),

cert. den. 401 U.S. 910). The delegations of authority to grant waivers of the provisions of Part 91 do not adversely affect any member of the public. The public is not required to change its conduct to conform to the result of the delegation. In addition, the delegation has not changed any of the procedures for seeking a waiver. A waiver is requested by completing the appropriate form and submitting it to any FAA office (FAR section 91.903(b)). Although there is no publication requirement associated with this delegation of authority, the public may inspect the FAA Orders, which discuss the delegation at any *of* the Document Inspection Facilities listed in 49 C.F.R. Part 7 Appendix C.

If you require any further information regarding this matter, please contact Mary McCarthy, Regulations and Enforcement Division, at this address.

Sincerely,

Donald P. Byrne Assistant Chief Counsel Regulations and Enforcement