October 21, 1991

Mr. Richard W. Xifo
Manager, Flight Operations
National Air Transportation Association
4226 King Street
Alexandria, Virginia 22302

Dear Mr. Xifo:

This is in response to your request for an interpretation dated August 14, 1991.

You ask the following questions:

1. Please explain why there are conflicting interpretations of the Part 135 grace month provisions?

Answer. Occasionally, as in any large organization, with far flung operations, inconsistencies in interpretations do occur. The Federal Aviation Administration (FAA) is constantly seeking to minimize such occurrences, and we are grateful to members of the public who point out such inconsistencies.

2. Which of the enclosed interpretations is correct regarding the legality of any flights conducted under FAR Part 135 during the grace month if a crewmember fails, for any reason, to complete the test or flight check during the grace month?

Answer. The enclosed interpretation, dated November 10, 1971, states the FAA's long standing position regarding this subject, and should answer your question. Although it addresses the Part 121 grace month provisions, it is equally applicable to the Part 135 grace month provisions.

3. If the interpretation provided by Ms. Alkalay is in fact correct, could you explain how a flight performed in a grace month can be in compliance and then become retroactively non-compliant the following month? Please be as specific as possible so that we may attempt to clarify this issue with Part 135 operators at our compliance seminars. Frankly we fail to see how, as Ms. Alkalay alleges, a flight can be conducted in compliance one day and then become retroactively non-compliant at some future date.

Answer. We have made Ms. Alkalay aware of the 1971 interpretation. She has assured us that the Eastern Region Helicopter Council, Inc., to whom her original interpretation was written (question and answer #16), has been made aware of the correct interpretation.

4. In correspondence from Mr. Walden, he states that "an interpretation of the FAR by an Assistant Chief Counsel serves as an interpretation for the Chief Counsel, and as such applies with equal force to the same issue in all the FAA regions." Does this mean that the only official or legally binding interpretations of the FAR are those issued by the Chief Counsel, region Assistant Chief Counsel or FAA attorney?

Answer. In general, the answer is the FAA's legal offices are the duly authorized issuers of legal interpretations. By policy of the Office of the Chief Counsel, legal interpretations of the flight time and rest regulations are issued only by the Assistant Chief Counsel, Regulations and Enforcement Division, or the Chief Counsel.

We hope the information in this letter will be helpful to you.

Sincerely,

Donald P. Byrne
Assistant Chief Counsel
Regulations and Enforcement Division