U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

JUL 19 2010

Stanley E. McGrew
[redacted]

By letter dated 15 March 2010, you requested an interpretation of 14 CFR section 91.215(b)(3)(ii) because you disagree with the FAA's statement that, "(s)ection 91.215 does not prohibit gliders or sailplanes not equipped with a transponder from operating above 10,000 MSL and thus above the ceiling of and outside Class B airspace." Letter to Shawn Knickerbocker from Rebecca B. MacPherson, Assistant Chief Counsel, Regulations Division, FAA, (September 6, 2006). You view the limitations in 14 CFR 91.215(b)(3)(ii) as applying to all airspace within 30 nautical miles of an airport listed in Appendix D, section 1 of 14 CFR part 91, both below and above 10,000 MSL. Paragraph (b) of section 91.215 states:

(b) *All airspace.* Unless otherwise authorized or directed by ATC, no person may operate an aircraft in the airspace described in paragraphs (b)(1) through (b)(5) of this section, unless that aircraft is equipped with an operable coded radar beacon transponder having either Mode 3/A 4096 code capability, replying to Mode 3/A interrogations with the code specified by ATC, or a Mode S capability, replying to Mode 3/A interrogations with the code specified by ATC and intermode and Mode S interrogations in accordance with the applicable provisions specified in TSO C–112, and that aircraft is equipped with automatic pressure altitude reporting equipment having a Mode C capability that automatically replies to Mode C interrogations by transmitting pressure altitude information in 100-foot increments. This requirement applies—

(1) *All aircraft.* In Class A, Class B, and Class C airspace areas;

(2) *All aircraft.* In all airspace within 30 nautical miles of an airport listed in appendix D, section 1 of this part from the surface upward to 10,000 feet MSL;

(3) Notwithstanding paragraph (b)(2) of this section, any aircraft which was not originally certificated with an engine-driven electrical system or which has not subsequently been certified with such a system installed, balloon or glider may conduct operations in the airspace within 30 nautical miles of an airport listed in appendix D, section 1 of this part provided such operations are conducted—

(i) Outside any Class A, Class B, or Class C airspace area; and

(ii) Below the altitude of the ceiling of a Class B or Class C airspace area designated for an airport or 10,000 feet MSL, whichever is lower; and

(4) All aircraft in all airspace above the ceiling and within the lateral boundaries of a Class B or Class C airspace area designated for an airport upward to 10,000 feet MSL; and

(5) All aircraft except any aircraft which was not originally certificated with an engine-driven electrical system or which has not subsequently been certified with such a system installed, balloon, or glider—

(i) In all airspace of the 48 contiguous states and the District of Columbia at and above 10,000 feet MSL, excluding the airspace at and below 2,500 feet above the surface; and

(ii) In the airspace from the surface to 10,000 feet MSL within a 10-nautical-mile radius of any airport listed in appendix D, section 2 of this part, excluding the airspace below 1,200 feet outside of the lateral boundaries of the surface area of the airspace designated for that airport.

With certain exceptions, sections 91.215(b) and 91.215(b)(5)(i) prohibit a person from operating an aircraft in all airspace of the 48 contiguous states and the District of Columbia at and above 10,000 MSL excluding the airspace at and below 2,500 feet above the surface unless that aircraft is equipped with an operable transponder with Mode C as described in section 91.215(b). An aircraft which was not originally certificated with an engine–driven electrical system or which has not subsequently been certified with such a system installed, balloon or glider, is an exception to those requirements as set out in section 91.215(b)(5). Section 91.215(b)(3)(ii) is not a limitation on section 91.215(b)(5), it is an exception to 91.215(b)(2) for certain aircraft, a balloon or glider, and is applicable to all airspace within 30 nautical miles of an airport listed in Appendix D, section 1 of 14 CFR part 91, "from the surface upward to 10,000 feet MSL."

This response was prepared by Cecile O'Connor, Attorney, Office of the Chief Counsel Regulations Division, and coordinated with the Air Traffic Organization.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200