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

Office of the Chief Counsel

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

MAY 21 2010

Ms. Jamie Tanabe
Tanabe Flying Services, Inc.
1093 E. Avocado Crest Road
La Habra Heights, CA 90631

Dear Ms. Tanabe:

This letter is in response to the request for legal interpretation, submitted to this office by the FAA's Western Pacific Regional Counsel, regarding your September 10, 2009 application for a letter of authorization (LOA) to conduct commercial air tours under part 91.

According to your application, you wish to conduct operations during which cremated remains would be scattered from an airplane. Additionally, you state that family members of the deceased would ride along on the airplane during the scattering flight "at no additional charge." These operations would be conducted in a Piper Aztec and would be conducted within 25 miles of that airport, and would be conducted only under visual flight rules.

The FAA considers dispersal of cremated human remains for compensation to be aerial work operations which are excepted from the requirement to hold a certificate authorizing operations under part 135. *See* Legal Interpretation to Charles Harris, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Jan. 30, 2009). However, to qualify for this exception, each person on board the aircraft must be necessary to perform the operation. *See* Legal Interpretation to Joe M. Sapp, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (May 17, 2007). Because the operations in this scenario would include the carriage of passengers not required for the dispersal of remains, these flights could not be conducted under the aerial work exception, and a part 119 certificate would be required.

The central question regarding your proposed operations is whether the operations could be commercial air tours and thus be eligible for exception from part 119. The FAA defines "commercial air tour" as a "flight conducted for compensation or hire in an airplane or helicopter where a purpose of the flight is sightseeing." 14 C.F.R. § 119.3. When determining whether a flight is a commercial air tour, the FAA may consider factors including whether the operator holds out a willingness to conduct a sightseeing flight for compensation or hire. *See id.*

The facts described in your September 10 letter indicate that sightseeing is not a purpose of the proposed operations, and that you would not be holding out a willingness to conduct a sightseeing flight. We note the purpose of the operations would be to perform "private

scattering[s] in which no other cremated remains are being scattered." Further, the passengers would not be charged for riding along in the aircraft during a scattering flight, which we interpret to mean that the charge would be for scattering the ashes from the aircraft, and not for conducting a sightseeing flight. Finally, the passengers on board these flights would be "choos[ing] to participate" in the scattering of ashes, and would therefore not be on board for sightseeing. These factors indicate that the proposed operations would not be commercial air tours as contemplated by § 119.1(e)(2), and could therefore not be operated under § 91.147. Such operations would need to be conducted under a part 119 operating certificate.

This response was prepared by Dean Griffith, Attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the Commercial Transportation Division of Flight Standards Service. Please contact us at (202) 267-3073 if we can be of further assistance.

Sincerely,

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