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

Office of the Chief Counsel

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

MAR 1 2010

Gregory S. Walden, Esq.
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2550 M Street, NW
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Dear Mr. Walden:

This letter responds to your letter of February 2, 2010, requesting a legal interpretation for one of your clients, Professional Flight Transport, d/b/a Windsor Jet Management ("Windsor"). In your letter, you briefly describe Windsor's intended flight operations and ask whether the FAA would regard them as scheduled operations.

You provide the following background. Windsor holds an air carrier certificate under 14 C.F.R. Part 119 authorizing it to conduct on-demand air-taxi operations under 14 C.F.R. Part 135. Windsor contemplates operating one or more aircraft several times a day, at first between airports in South Florida and the New York City metropolitan area, and later between airports in other regions. Windsor intends to advertise that it has one or more aircraft available for charter. It would negotiate with the customer the particular departure and arrival airports. Windsor would not advertise any precise departure time.

You ask whether the FAA would consider Windsor's proposed operations to be scheduled operations. As you know, depending on the circumstances, the regulations require operators conducting scheduled operations to operate under 14 C.F.R. Part 135 commuter rules[1] or even 14 C.F.R. Part 121 domestic or flag rules.[2] The regulations define "scheduled operation" as "any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial operator for which the certificate holder or its representative offers in advance the departure location, departure time, and arrival location." 14 C.F.R. § 119.3. Thus, if Windsor were to offer in advance the following three elements – the departure location, the departure time, and the arrival location – then its proposed operations would be scheduled operations.

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[1] See the definition of "commuter operation" in 14 C.F.R. § 119.3 for information on when the 14 C.F.R. Part 135 commuter rules would apply. Note that FAA regulations permit on-demand operators to conduct a limited number of scheduled operations in certain types of aircraft. (See the definitions of "commuter operation" and "on-demand operation" in 14 C.F.R. § 119.3.)

[2] For information on when the 14 C.F.R. Part 121 rules would apply, see the definitions of "domestic operation" and "flag operation" in 14 C.F.R. § 119.3.

Regarding the departure time, you state that Windsor would not advertise any precise departure time. You do not state, however, whether Windsor would offer a departure window – *e.g.*, from 1:30 p.m. to 2 p.m. – and if so, how large the window would be. As indicated in a previous interpretation of the regulations, the smaller the departure window, the more it would appear that the air carrier is offering in advance the departure time. *Letter to Jamie Walker, President, Jet Linx Aviation, from Rebecca B. MacPherson, Assistant Chief Counsel, Regulations Division, FAA (June 6, 2006).*

Regarding departure and arrival locations, you have indicated that Windsor would not offer these in advance, but instead would negotiate them with each customer. If that is the case, then Windsor would not be offering in advance all three elements – the departure location, the departure time, and the arrival location – and therefore the proposed operations would not be scheduled.

We trust that this interpretation has answered your questions. It was prepared by Sheila Skojec, Senior Attorney, reviewed by Anne Bechdolt, Acting Manager, Operations Law Branch of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,



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