# Federal Aviation Administration

# Memorandum

Date: JAN 5 2011

To: John S. Duncan, Manager, Air Transportation Division

From: Rebecca B. MacPherson, Assistant Chief Counsel for Regulations

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Subject: Request for Letter of Interpretation re: 14 C.F.R. §91.147(b)

This memorandum serves as a Letter of Interpretation regarding 14 C.F.R. §91.147(b), Passenger Carrying Flights for Compensation or Hire, as you requested.

Section 91.147(b) contains a date, September 11, 2007, by which existing air tour operators were to apply for and receive a Letter of Authorization (LOA) from the Flight Standards District Office (FSDO), which would enable the operator to continue to operate under Part 91. This date was included in the rule to allow existing air tour operators a reasonable amount of time to bring themselves into compliance with the new rule, and obtain a LOA to permit their continued operation.

In the final rule for National Air Tour Safety Standards, 72 FR 6884-6914, it is clearly stated in Section II, Summary of the Final Rule, subsection A. Applicability, that this rule addresses three groups of air tour operators, of which Groups 2 and 3 are Part 91 operators. The final rule further states that Group 2 consists of air tour operators that would have been certificated as an air carrier like Group 1 if it weren't for the 25-mile exception in Parts 119, 121 and 135. "Because of the exception, this group is allowed to conduct flights under the operating rules of Part 91. The exception will continue."

We believe that the language in the preamble to the final rule supports the idea that the September 11, 2007 date was only intended as a compliance date for existing air tour operators under Part 91 to apply for and receive a LOA from the FAA to continue operating under that part. We also believe the rule contemplated that future operators would apply for and receive LOAs from FAA to conduct operations under Part 91. In fact, in the Paperwork Reduction Act analysis in the final rule, the cost for operators of applying for and complying with LOAs from FAA to operate under Section 91.147 is estimated based on the number of current operators, and the estimated number of operators who will register each year in the future. "Initially, 645 operators will apply and thereafter, 16 new operators will register each year."

Further evidence that the rule was not intended to force all Part 91 operators to register as Part 121 or Part 135 operators are contained in the Comment Summary section of the final rule. In this section, it is stated that most commentators opposed the NPRM on one or more grounds, including, "3. Part 91 operators will go out of business if forced into Part 135." Additionally, the preamble goes on to say that, "the cost associated with placing all air tour operations into Part 121 or Part 135 far outweighs any potential increase in safety."

Thus, based on careful analysis of the NPRM and the preamble to the Final Rule, we conclude that the date of September 11, 2007 for operators to apply for a Letter of Authorization from the FAA to operate under Part 91 was intended only as a compliance date for existing operators, and not as a date after which no operators would be allowed register under Part 91.

We would be happy to work with you on efforts to modify the rule to remove any confusion or doubt. We hope this response has been helpful, and please contact us if you have any questions or need further assistance.