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

Office of the Chief Counsel

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

AUG 26 2011

Mark McCulloh
Parasail Safety Council
Clayton-McCulloh Building
1065 Maitland Commons Boulevard
Maitland, FL 32751

Dear Mr. McCulloh:

On June 3, 2011, you emailed the FAA requesting clarification of a prior FAA legal interpretation concerning the applicability of part 101 to parasail operations. In that legal interpretation, the FAA concluded parasails and parasail operations are subject to FAA regulations applicable to kites under 14 C.F.R. part 101. Legal Interpretation to the General Aviation and Commercial Division of Flight Standards Service (Nov. 9, 2009) (hereinafter, the "2009 Interpretation"). The FAA concluded a parasail falls within the definition of a kite because it is "held aloft by the wind resulting from the movement of the boat towing it." *Id.* This conclusion was consistent with previous FAA interpretations, dating back as far as 1957. *See id.* Your request for clarification states several reasons why the FAA should reconsider its interpretation of the applicability of part 101 to parasail operations. This letter responds to your request.

Section 1.1 of 14 C.F.R., in relevant part, defines a "kite" as "a framework, covered with paper, cloth, metal, or other material, intended to be flown at the end of a rope or cable, and having its only support the force of the wind moving past its surfaces." Section 101.1(a)(2), in relevant part, states part 101 prescribes rules for the operation of "any kite that weighs more than 5 pounds and is intended to be flown at the end of a rope or cable." Section 101.1(b), in relevant part, states "[f]or the purposes of this part, a *gyroglider* attached to a vehicle on the surface of the earth is considered to be a kite." (Emphasis in regulation.)

Your request contends the FAA erred in concluding a "manned" parasail fell within the definition of a kite. Among other arguments, for which further discussion is unnecessary, your request contends other devices regulated under part 101 are either explicitly or implicitly unmanned devices. Your request correctly states that regulations concerning amateur rockets under subpart C and unmanned free balloons under subpart D apply to only unmanned devices. *See* §§ 101.21(a), 101.31. Although the regulations concerning moored

balloons under subpart B are silent on applicability to only unmanned devices, the FAA has stated a moored balloon regulated under part 101 is "a balloon that is secured to the earth by several mooring lines and does not carry a person." Legal Interpretation to Mr. Bramble (Mar. 11, 1994). The regulations concerning kites under subpart B appear silent on the applicability to only unmanned devices. However, § 101.1(b) includes a "gyroglider attached to a vehicle on the surface of the earth" within the definition of a "kite." This provision has been part of the regulations applicable to kites and moored balloons since 1957. *See* 22 FR 5978 (Jul. 30, 1957) (then applicable 14 C.F.R. § 48.1). Although gyrogliders are less common today than they were in the 1950s, these devices, which can carry a person, have no engine but can be towed into the air behind a car or boat. *See* 22 FR 5978; *see also* http://en.wikipedia.org/wiki/Gyroglider. Additionally, the FAA concluded a hang glider, which can carry a person, flown at the end of a rope or cable is a kite. *See* Legal Interpretation to Mark S. Dodge (Mar. 25, 1975). A parasail is similar in nature to a towed gyroglider or a towed hang glider. Accordingly, the 2009 Interpretation is consistent with longstanding FAA definition of a kite, and the FAA properly concluded a parasail is a kite and therefore regulated under part 101.

Your request also asks the FAA to draw a parallel between a parasail and a parachute because, as the letter alleges, an untethered parasail is a parachute. Section 1.1, in relevant part, defines a "parachute" as "a device used or intended to be used to retard the fall of a body or object through the air." Without determining whether an untethered parasail is a parachute, the FAA concludes a parasail falls within the definition of a "kite" and not of a "parachute" because a parasail is intended to be flown at the end of a rope or cable and held aloft by the force of the wind moving past its surfaces.

Finally, your request states the Parasail Safety Council will tender a formal petition for rulemaking with specific applicability to parasail operations. The procedural rules for rulemaking petitions are prescribed in 14 C.F.R. part 11, subpart A, and the FAA responds to those petitions accordingly. The FAA notes this letter is not a response to any petition for rulemaking.

Accordingly, the FAA reaffirms its 2009 Interpretation. Parasails and parasail operations are subject to the FAA regulations applicable to kites. Currently, the FAA regulates kites (including parasails) under part 101 only to the extent they are objects in the airspace. *See* 2009 Interpretation. The applicable regulations are contained in subpart A (§§ 101.1-101.7) and B (§§ 101.11-101.17) of part 101.

The FAA recognizes that many parasail operations may not be able to comply with all regulations applicable to them. Section 101.3, in relevant part, states "[n]o person may conduct operations that require a deviation from this part except under a certificate of waiver issued by the Administrator." The FAA reviews a request for waiver on a case-by-case basis with an aeronautical analysis applicable to that specific operation. Special provisions attached to a certificate of waiver or authorization should be specific and unique to the waiver request, and they should ensure an equivalent level of safety to regulations being waived. *See* Letter to Mark McCulloh from Dennis E. Roberts, Director, Airspace Services, Air Traffic Organization (Mar. 15, 2011).

This response was prepared by Robert Hawks, an Attorney in the Regulations Division of the Office of Chief Counsel, and coordinated with the General Aviation and Commercial Division of Flight Standards Service and the Airspace Regulations Group of the Air Traffic Organization. We hope this response has been helpful to you. If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

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