Federal Aviation Administration

Memorandum

Date: JUN 20 2011

To: Chris Poreda, Attorney, Office of the Regional Counsel, New England Region, ANE-007

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

Prepared by: Nancy Sanchez, Attorney, Regulations Division

Subject: Legal Interpretation of 14 CFR § 1.1, definition of "night."

This memorandum is in response to your inquiry regarding the definition of "night" in 14 CFR § 1.1. You asked whether the definition of "night" in § 1.1 is an appropriate incorporation by reference since: 1) the definition references the "American Air Almanac" instead the "Air Almanac" and 2) "[the almanac] must be purchased from the publisher and is not readily available to the persons who are affected by the regulation." The answer to your question is yes, this is an appropriate incorporation by reference.

14 CFR § 1.1 defines "night" as "the time between the end of evening civil twilight and the beginning of morning civil twilight, as published in the American Air Almanac, converted to local time." The Air Almanac contains the astronomical data required for air celestial navigation and is produced annually by the Nautical Almanac Office at the United States Naval Observatory. In 1953, the Air Almanac and the American Air Almanac became a single publication, under the title of the Air Almanac. We will keep this in mind and look for an opportunity to make a technical correction to this definition in the CFR.

You also question whether this is an appropriate incorporation by reference since the almanac "is not generally available to the public without charge." The FAA considers this material to be readily available to the public. The Air Almanac is available, in CD format, from the US Government Printing Office (GPO).[1] If one wishes to own a copy of

---

[1] The 2011 version of the Air Almanac, in CD form, is currently priced at $28 and available for purchase from the US Government Printing Office. *See* GPO US Government Library website, http://bookstore.gpo.gov/; *see also* the US Naval Observatory website, http://www.usno.navy.mil/USNO/astronomical-applications/publications/ord-info. Similarly, a pilot who

the almanac in its entirety, it must be purchased. The US Naval Observatory website, however, contains a "Data Services" page that provides free access to an online form that computes the times for civil twilight. This service allows a user to enter either a US city or latitude and longitude to obtain a table of times for the beginning and end of civil twilight for an entire year. The definition of "night" in § 1.1 references "civil twilight" as published in the almanac. This specific information is readily available, at no cost, on the US Naval Observatory website.

Additionally, the Government Printing office runs a Federal Depository Library Program (FDLP), which disseminates government publications to about 1,250 libraries nationwide at no cost. An interested party may visit a Federal Depository Library in the vicinity to view these items for free.[2]

---

wishes to purchase and own a personal compilation of Title 14 of the CFR may purchase it from the GPO for $227 or access it online at no cost.

[2] The Federal Depository Library Directory lists 28 Federal Depository Libraries in Massachusetts, including 5 in Boston. *See* http://catalog.gpo.gov/fdlpdir/FDLPdir.jsp