Federal Aviation Administration

Memorandum

Date: November 30, 2011

To: Kenneth Wong, Manager, AST-200, Licensing and Evaluation Division

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

Subject: Legal interpretation of the words "in writing" under 14 C.F.R. § 413.7(a)

Dear Mr. Wong,

This responds to your request for a legal interpretation dated August 2, 2011. In your request, you ask what is meant by the words "in writing" under section 413.7(a).

Section 413.7(a) states in pertinent part: "An application [for a launch license] must be in writing, in English and filed in duplicate with the Federal Aviation Administration, Associate Administrator for Commercial Space Transportation . . . ." You state that AST wants to offer launch vehicle operators the option to submit their license and permit applications electronically only.

The language of the regulation, particularly as emphasized by the requirement that the application be filed in duplicate, shows that the in writing requirement means applications must be filed on paper. Neither the NPRM nor the final rule discusses whether or not electronic submissions were contemplated in order to fulfill the in writing requirement.

Other agencies have used rulemaking in order to extend their in writing requirements to electronic documents. The Food and Drug Administration issued a final rule in 1997 that provides criteria for acceptance by the FDA, under certain circumstances, of electronic records, electronic signatures, and handwritten signatures contained in electronic records as equivalent to paper records and handwritten signatures on paper. Electronic Records; Electronic Signatures , 62 FR 13430 (March 20, 1997). The rulemaking states that submitting documents and signatures electronically to the FDA is voluntary.

Rulemaking would be appropriate for AST in this circumstance because it would allow AST to extend the option of submitting applications electronically, while putting industry

on notice of this procedural change. Because this would be a noncontroversial procedural rule, AST could pursue a direct final rule.

I hope this information has been helpful. If you have further questions concerning this response, please contact Sabrina Jawed on my staff at 202-267-3073.

Sincerely,

Rebecca MacPherson
Assistant Chief Counsel for Regulations, AGC-200