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

OCT 23 2012

Mr. Michael S. Mason
[redacted]

Dear Mr. Mason:

This letter is in response to your June 7, 2012 request for legal interpretation of sections 91.147, 110.2,[1] and 119.1 of Title 14, Code of Federal Regulations. You ask whether your operation could be considered an air tour that would need to comply with § 91.147.

You describe that you own a Stearman biplane and offer aerobatic/biplane rides under the authority of your commercial pilot certificate. You state that you "do not hold out as willing to conduct a sightseeing flight for hire, don't provide a narrative, don't fly over a particularly scenic area," do not fly over a tourist area, and do not "include sightseeing as part of a travel arrangement package." Therefore, you contend, that the regulations governing air tours, including the § 91.147 Letter of Authorization and drug and alcohol testing requirements do not apply to your operations.

With limited exceptions, a person conducting passenger carrying operations for compensation or hire must hold a part 119 air carrier or commercial operator certificate. *See* Legal Interpretation to Ray Bonilla, Esq., from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Sept. 7, 2011). The FAA has made limited exceptions for certain operations, such as nonstop commercial air tours, which may be operated without a part 119 certificate under part 91 rules, provided certain conditions are met. *See* §§ 91.147, 110.2, 119.1(e)(2).

The FAA defines a commercial air tour as "a flight conducted for compensation or hire . . . where a purpose of the flight is sightseeing." § 110.2. The definition includes eight factors that the FAA may consider in determining whether a flight is a commercial air tour. Your letter expresses your opinion that your operation does not meet the factors in the definition. It also expresses concern that the definition's final factor, "[a]ny other factors that the FAA considers appropriate," may be interpreted to find your operation a commercial air tour even if it does not meet the other factors in the definition.

We note that the "commercial air tour" definition in § 110.2 allows, but does not require, the FAA to consider the factors articulated in the definition when determining whether a flight is a commercial air tour. *See* § 110.2 ("The FAA may consider the following factors . . . ."). The language of the definition does not require that an operation meet a certain number of the factors articulated nor does it require that the operation meet any of the factors in the list for the FAA to find an operation to be a commercial air tour. *See* National Air Tour Safety Standards Final Rule, 72 Fed. Reg. 6884, 6894 (Feb. 13, 2007) ("Although commenters have

[1] Section 119.3 (definitions) referenced in your letter was recodified as § 110.2 in 2011. *See* 76 Fed. Reg. 7486 (Feb. 10, 2011)

stated that sightseeing is not always a purpose of the [barnstorming or vintage aircraft] flight, the FAA considers the overall character of the flight to be sightseeing, even if a primary purpose may be the experience of flight in an historic aircraft."). Accordingly, if the FAA finds that factors other than those articulated in the definition indicate that a "flight is conducted for compensation or hire in an airplane or helicopter where the purpose of the flight is sightseeing" then the operation can be considered a commercial air tour subject to the appropriate regulations.

Therefore, although you state that your operations do not meet the factors articulated in the definition of commercial air tour, without additional facts we will not opine as to whether your operation is, or is not, a commercial air tour that must operate pursuant to § 91.147 or the air tour rules of part 136.

Finally, we would like to reiterate the general rule that if a flight involves the carriage of persons or property for compensation or hire, and does not meet an exception listed in § 119.1(e), then the operator is required by part 119 to hold an air carrier or commercial operator certificate and conduct such flights in accordance with the appropriate operating rules. *See* § 119.1(a); Legal Interpretation to Bob Shaw, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Feb. 4, 2008).

This response was prepared by Dean E. Griffith, an attorney in the International Law, Legislation and Regulations Division of the Office of the Chief Counsel. It was coordinated with the General Aviation and Commercial Division and Air Transportation Division of Flight Standards Service. Please contact us at (202) 267-3073 if we can be of additional assistance.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for International
Law, Legislation and Regulations