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

Office of the Chief Counsel

800 Independence Avenue, SW
Washington, DC 20591

OCT 23 2013

M. Eddie Ochoa
Aviation First Consulting, LLC
30214 N. 48th Place
Cave Creek, Arizona 85331

Dear Mr. Ochoa:

This letter responds to your June 14, 2013, correspondence requesting a legal interpretation of 14 C.F.R. § 298.23 as it applies in the context of a part 135 air taxi operator adding a new aircraft type to existing operations. You appear to be asking at what point in time after submitting an amended OST form 4507 (Air Taxi Registration) to the FAA, the part 135 air taxi operator could begin using the new aircraft type in its operations. Specifically, you asked whether the air taxi operator must wait until after receiving notice that the amended form 4507 has been approved, before adding the new aircraft type to its operations specifications.[1] You stated that "[i]t seems contrary to the regulations for the local FSDO to require the 135 operator to wait to receive the 'stamped' form 4507 back before adding an aircraft...to their operation specifications."

For the reasons provided herein, we conclude that the air taxi operator may begin using the new aircraft type in operations if the amended OST form 4507 is submitted to the FAA within the requisite 30-day timeframe from the change in operations and provided the operator has met the requirements of 14 C.F.R. §§ 119.49 and 119.51 to obtain approval of the updated operations specifications. For additional context, we begin with a background discussion summarizing the relevant legal requirements for air carrier certification.

Background

A prospective air carrier must obtain two separate authorizations as conditions prior to providing interstate air transportation. First, the prospective air carrier must obtain economic authority from the Department of Transportation (DOT) via the process for obtaining a certificate of public convenience and necessity in accordance with 49 U.S.C. § 41101. Second, the prospective air carrier must obtain safety authority from the FAA via the air carrier certification and operations specifications issuance processes in accordance with part 119 of Title 14 C.F.R.

Under part 298 of Title 14 C.F.R. certain classes of air carriers, including air taxi operators, may obtain an exemption from certain requirements in Subtitle VII of Title 49 U.S.C., including the

[1] Based on your report of correspondence with your local Flight Standards District Office (FSDO), we understand that you are not asking about the regulatory provisions related to the requirement for registering and updating liability insurance information under part 298.

requirement to obtain economic authority from the DOT via a certificate of public convenience and necessity in accordance with 49 U.S.C. § 41101. *See* 14 C.F.R. §§ 298.1 and 298.11(a). Air taxi operators that seek an exemption under § 298.11(a) must nonetheless "register with the Department not later than 30 days prior to the commencement of such operations." *See* 14 C.F.R. § 298.21(a). The registration is filed with the FAA Program Management Branch using OST form 4507. *See* § 298.21(c)(1) and (d).

Since air taxi operations are treated as on-demand operations under part 135 of the federal aviation regulations, an "air carrier" or "operating" certificate must be obtained through the FAA's part 119 certification process. *See* 14 C.F.R. §§ 110.2 and 135.1(a)(1). Once appropriately certificated, the prospective air carrier must then obtain operations specifications, which "reference...the economic authority issued by the Department of Transportation" (e.g. the form 4507 that you referenced) and include the aircraft category, class, and type if applicable, to be used in operations. *See* 14 C.F.R. § 119.49(c)(3) and (5)-(6).

Discussion

In your letter, you specifically referenced § 298.23, which provides the process for updating the registration required by § 298.21. This section requires air taxi operators to notify the DOT (through the FAA) of changes to "any of the information contained on its registration" and requires an amendment to be "filed no later than 30 days after the change occurs." *See* § 298.23(a). This requirement was initially added to Title 14 C.F.R. as § 298.52 in a 1973 direct final rule and was recodified at § 298.23 in 1975. *See* Biennial Registration of Air Taxi Operators, 38 F.R. 11067 (May 4, 1973); Revision and Reissuance of part 298, 40 F.R. 42855 (Sep. 17, 1975). The Agency explained its intent to require air taxi operators to advise the FAA of any change in the type of operations by stating that "this information should enable the [FAA] to maintain" a current record on each carrier. *See* 38 F.R. 11068.

The regulatory text of § 298.23 plainly permits an air taxi operator to file an amended registration form with the designated FAA office after the change in operations – in your example, the addition of a new type of aircraft to existing operations – has occurred. Therefore, this section of the regulations in particular does not require the air taxi operator to wait for receipt of approval of the amended registration from the FAA before using the new aircraft type in operations. However, the fact that the amended registration form required under § 298.23 may be submitted after the change in operations has occurred does not relieve the air taxi operator from the responsibility to obtain approval for any necessary amendment to the operations specifications from the FAA under the procedures set forth in § 119.51.[2] In addition, if the air taxi operator fails to submit the amended registration within 30 days after it begins operating the

[2] Since you did not provide a particular aircraft type in your example, we assume for purposes of this interpretation that the aircraft type being added to the existing air taxi operations is subject to the requirement in § 119.49(c)(6), which requires inclusion in the operations specifications of "[t]ype of aircraft, registration markings and serial number of each aircraft that is subject to an airworthiness maintenance program required by § 135.411(a)(2)..." Even if the aircraft type is not required, 119.49(c)(5) requires the category and class of aircraft used in operations to be included in the operations specifications. Therefore, if the addition of a new aircraft to existing operations involves adding a new or different aircraft category or class, the operations specifications must still be updated.

new aircraft, it will be in violation of 14 CFR Part 298 and could lose its exemption authority, and be subject to enforcement action.

Accordingly, the air taxi operator may begin using the new aircraft type in operations provided the operator has met the requirements of §§ 119.49 and 119.51. The certificate holder is required to file an application to amend its operations specifications prior to the desired effective date of the amendment under § 119.51(c)(1), but the amendment is not effective until approved by the Administrator as set forth in § 119.51(c)(4). Thus, the air taxi operator at issue may not begin using the new aircraft type in operations until the amended operations specifications are approved by the Administrator.[3] For additional information on the process for updating the operations specifications, please refer to the applicable internal FAA guidance to principal inspectors, which is available at www.faa.gov/regulations_policies/orders_notices/. *See* FAA Order 8900.1 Vol. 3, Ch. 18, Sec. 8, para. 3-1028 and Vol. 4, Ch. 16, Sec. 1.

This response was prepared by Bonnie C. Dragotto, an attorney in the International Law, Legislation and Regulations Division of the Office of the Chief Counsel, and was coordinated with the Air Transportation Division of the Flight Standards Service and the Aviation Licensing Compliance Branch, Office of Aviation Enforcement and Proceedings, of the DOT Office of the General Counsel. If you need further assistance, please contact our office at (202) 267-3073.

Sincerely,

Mark W. Bury
Assistant Chief Counsel for International Law, Legislation and Regulations, AGC-200

[3] We also note that in the context of the initial certification process of a prospective air carrier seeking to engage in interstate air transportation, proof of economic authority (which could be the form 4507 in the case of an air taxi operator applicant) must be provided as a prior condition to certification under part 119. In such case, the approved form 4507 is required before the operations specifications would even be issued. *See* FAA Order 8900.1 Vol. 2, Ch. 4, Sec. 5, para. 2-438.