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

Office of the Chief Counsel

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

DEC - 4 2014

Captain John Weigand
United Airlines
Managing Director Flight Standards
7401 Martin Luther King Blvd.
Denver, CO 80207

Re: Regulatory effect of position plotting provisions in AC 91-70A and FAA Order 8900.1

Dear Captain Weigand,

This is in response to your letter asking whether a provision of Advisory Circular (AC) 91-70A and FAA Order 8900.1 is a mandatory regulatory requirement. Specifically, both AC 91-70A and FAA Order 8900.1 contain a provision stating that "[t]here is a requirement to plot the route of flight on a plotting chart and to plot the computer position approximately 10 minutes after waypoint passage."[1] You ask whether this provision is mandatory.

FAA Order 8900.1 contains directives and guidance information for Aviation Safety Inspectors (ASI) and does not apply directly to regulated entities. Turning to AC 91-70A, this AC contains general information and guidance for operators planning oceanic flights. The information is intended to provide operators with a method of complying with regulatory requirements. AC 91-70A is neither a regulation nor an official FAA interpretation of a regulation. Therefore, its content is advisory only and not mandatory.[2] However, operating in accordance with the information contained in an AC may ensure regulatory compliance. Ultimately, regulated entities are free to choose a method other than what is specified in AC91-70A, to comply with the pertinent FAA regulations. Since neither the AC nor the 8900.1 constitute a regulation or an official legal interpretation of a regulation, no exemption is necessary to deviate from the provisions of either of these documents.

We emphasize, however, that the regulated entities are responsible for complying with all applicable FAA regulations. Thus, while the regulated entities need not use the specific method of compliance specified in AC 91-70A and FAA Order 8900.1, the method of compliance that is ultimately used by a regulated entity must satisfy all applicable regulations.

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[1] AC 91-70A, sec. 3-6(a)(1); FAA Order 8900.1, vol. 4, ch. 1, sec. 4-80(A).

[2] *See* Letter to George Braly from Rebecca MacPherson, Assistant Chief Counsel for Regulations (Nov. 24, 2010) (stating that "an advisory circular has no regulatory effect").

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Alex Zektser, Attorney, International Law, Legislation, and Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,

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