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

Office of the Chief Counsel
800 Independence Ave., SW.
Washington, DC 20591

MAY -5 2015

Samuel T. Ragland
Chief Pilot, Double Eagle Aviation
Tucson International Airport
6961 S. Apron Drive
Tucson, Arizona 85706

Subject: Applicability of part 119 certification requirements and/or 14 CFR §91.147 to commercial air tour operations

Dear Mr. Ragland:

This letter responds to your December 19, 2014 request for a legal interpretation of 14 C.F.R. §91.147, §119.1 and §120.1. Specifically, you asked whether §119.1(e)(4) allows persons to conduct commercial air tour operations, for purposes of sightseeing and photography, without obtaining either a letter of authorization (LOA) in accordance with §91.147 or a commercial operating certificate in accordance with part 119 of the federal aviation regulations.

You assert that the conclusion in a January 5, 2011 interpretation issued by our office "appears to reinforce the need for Operators to apply for a LOA from their local FSDO to conduct 'sight-seeing tours' within a 25 statute mile limitation under 14 CFR 91.147." We agree.

The January 5, 2011 interpretation addressed the issue of a date referenced in §91.147(b), which "was included in the rule to allow existing air tour operators a reasonable amount of time to bring themselves into compliance with the new rule, and obtain a LOA to permit their continued operation." *See* legal interpretation to John S. Duncan (Jan. 5, 2011); *see also* National Air Tour Safety Standards Final Rule, 72 Fed. Reg. 6884-6914 (Feb. 13, 2007). As we have explained previously, the 2007 Air Tour Safety Final Rule addressed three groups of operators, including commercial air tour operators conducting air tours beyond 25 statute miles of the departure airport, which must be certificated in accordance with part 119 (Group 1); commercial air tour operators that would otherwise be required to comply with the certification requirements of part 119, but which are excepted from part 119, provided the air tour is conducted within a 25-statute mile radius of an airport, and instead permitted to operate pursuant to an LOA in accordance with §91.147 (Group 2); and, operators that conduct air tours for certain charitable, nonprofit, and community events in accordance with §91.146 (Group 3). *Id.* The final rule requires Group 1 and 2 air tour operators to comply with the drug and alcohol testing requirements in part 120. Id.; *see also* §120.1(a).

You assert that certain "FBOs…conduct sightseeing tours (some beyond the 25 mile limitation) without an LOA or commercial certificate" and without complying with the part 120 drug and alcohol testing requirements in part 120. In your letter, you allege one FBO indicated that §119.1(e)(4) "exempt[s] them from any Sec. 91.147 LOA, part 121, 135 or 136 certificates and random drug testing program." Without additional facts about the FBO operations referenced in

your letter, we are unable to opine as to the accuracy of your assertions that the operators in question must comply with §91.147.

However, we reiterate that, except in the case of Group 3 charitable and nonprofit air tours, all commercial air tour operations, as defined in 14 CFR §110.2, must comply with either the part 119 certification requirements, if the operator seeks to conduct air tours beyond 25 statute miles of the departure airport, or the requirement to obtain an LOA from the FAA in accordance with §91.147, if the air tour operations would be conducted within a 25-statute mile radius of the airport.[1]

We further note that the exception in §119.1(e)(4) for certain "aerial work operations," such as banner towing, aerial photography or survey, and powerline or pipeline patrol, does not extend to air tour operations in which the primary purpose is sightseeing. *See* Commuter Operations and General Certification and Operations Requirements Final Rule, 60 Fed. Reg. 65832, 65914 (Dec. 20, 1995); *see also e.g.* Legal Interpretations to Angelina Shamborska (Feb. 5, 2010)(Aerial photography and survey for the purpose of traffic reporting would appear to fall within the ambit of the [aerial work] exception.), and Ray Bonilla (Sep. 7, 2011)(If the flight operation becomes "dual purpose" then the exception in §119.1(e) would not apply.), copies of which are enclosed.[2] Indeed, the aerial work exception has been interpreted as meaning work done from the air with the same departure and destination points and operations in which no property of another or passengers who are not essential to the operation are carried. *See* Legal Interpretation to Steven Saint Amour (Sep. 8, 2014).

This response was prepared by Bonnie C. Dragotto, an Attorney in the Regulations Division of the Office of the Chief Counsel and coordinated with the Air Transportation Division of the Flight Standards Service. If you need further assistance, please contact our office at (202) 267-3073.

Sincerely,

Lorelei Peter
Deputy Assistant Chief Counsel for Regulations, AGC-200

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[1] As defined in 14 CFR 110.2, *commercial air tour* means a flight conducted for compensation or hire in an airplane or helicopter where a purpose of the flight is sightseeing. The FAA may consider the following factors in determining whether a flight is a commercial air tour: (1) Whether there was a holding out to the public of willingness to conduct a sightseeing flight for compensation or hire; (2) Whether the person offering the flight provided a narrative that referred to areas or points of interest on the surface below the route of the flight; (3) The area of operation; (4) How often the person offering the flight conducts such flights; (5) The route of flight; (6) The inclusion of sightseeing flights as part of any travel arrangement package; (7) Whether the flight in question would have been canceled based on poor visibility of the surface below the route of the flight; and (8) Any other factors that the FAA considers appropriate.

[2] The 2007 Air Tour Safety Final Rule modified §119.1(e)(2), which historically served as an exception from the part 119 certification requirements for "nonstop sightseeing flights that begin and end at the same airport and are conducted within a 25 statute mile radius of that airport..." *See* 72 Fed. Reg. 6884, 6886 and 6911; 60 Fed. Reg. 16230, 16278.