



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

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

JUL 31 1992

Nicholas H. Cobbs, Esq.
Federal Bar Building
1815 H Street, NW., Suite 600
Washington, DC 20006-3604

Dear Mr. Cobbs:

On July 23, I wrote you addressing the June 24 position letter that you submitted on behalf of your client, United States Parachute Association (USPA), in response to Zephyrhills Parachute Center's request for a written interpretation of 14 CFR 91.111(c). On January 8, Joseph Kuchta, Esq., the attorney for Zephyrhills, submitted a letter to the Federal Aviation Administration contending that parachutists are passengers within the meaning of Section 91.111(c). Mr. Kuchta further contended that the operation of aircraft in formation flight, while carrying parachutists for hire, requires an exemption from Section 91.111(c). The USPA strongly disagreed with the position that was advanced by Mr. Kuchta on behalf of his client.

In my letter to you, I enclosed my response to Mr. Kuchta, which was based on an extensive review of the meaning of "passenger" in Section 91.111(c) as the term relates to parachutists. After considering the regulatory history and your position letter, it was my opinion that parachutists are passengers within the meaning of Section 91.111(c).

Today I have written Mr. Kuchta advising him that I have reconsidered the advice that I provided him on July 23. Since issuing my opinion I have reexamined the prior agency view of this matter. While I continue to feel that the regulatory history of the rule supports the conclusion presented in my letter, I must recognize that the agency has publically held the position that parachutists are not passengers within the meaning of Section 91.111(c) for a significant period of time. On further consideration, I do not think it would be appropriate to effectively reverse the agency's long-standing practice without appropriate public notice and comment. Whether to go forward with such a proceeding is not within the sphere of my responsibilities, and, under the circumstances, I advised Mr. Kuchta that I must withdraw my advice to him.

Without further action by the agency, Section 91.111(c) should not be viewed as prohibiting formation flight carrying parachutists on the basis of a conclusion that they are passengers.

For your convenience, we have enclosed a copy of my second letter to Mr. Kuchta.

Sincerely,



Donald P. Byrne
Assistant Chief Counsel
Regulations and Enforcement Division

Enclosure
Transmitted Correspondence