

## How Do You Know If You Are A Commercial Air Tour Operator?

by Greg Reigel

The FAA Office of Chief Counsel addressed this issue in a recent “legal interpretation.” The interpretation responded to a request by an operator asking whether his operation “could be considered an air tour that would need to comply with § 91.147.”



Greg Reigel

In his request, the operator indicated that he owned a Stearman biplane in which he offered aerobatic/ biplane rides. He also stated that he did not hold out as being willing to conduct a sightseeing flight for hire, did not provide a narrative, did not fly over a particularly scenic area, did not fly over a tourist area, and did not “include sightseeing as part of a travel arrangement package.” Based upon these facts, the operator asked the FAA to confirm that “the regulations governing air tours, including the § 91.147 Letter of Authorization and drug and alcohol testing requirements [did] not apply to [his] operations.” The interpretation initially observed that “[w]ith limited exceptions, a person conducting passenger carrying operations for compensation or hire must hold a Part 119 air carrier or commercial operator certificate.”

However, nonstop commercial air tours are an exception to this rule and may be operated without a Part 119 certificate under Part 91 rules, provided certain conditions are met.”

Next, the interpretation observed that 14 C.F.R. 110.2 defines a commercial air tour as “a flight conducted for compensation or hire ...where a purpose of the flight is sightseeing.” To determine whether a flight is a commercial air tour, the FAA may consider the following eight factors:

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.

Although the FAA may consider these factors to determine whether a flight is a commercial air tour, it is not required to, nor does an operation have

to meet one or more of the factors for the FAA to conclude that an operation is a commercial air tour. As a result, based upon factors other than the eight included in the definition, the FAA could still find that a flight is a commercial air tour because it is (1) conducted for compensation or hire, and (2) for the purpose of sightseeing.

With this background, the interpretation then informed the operator that the FAA would need additional facts in order to render an opinion as to whether the operation was, or was not, a commercial air tour that must operate pursuant to 14 C.F.R. 91.147 or the air tour rules of Part 136. Finally, it concluded with a reminder to the operator 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.”

Unfortunately, this interpretation doesn't provide the operator with an answer to his question, nor does it provide much concrete advice. Basically, the FAA can look at the eight factors, or anything else it may want, in order to reach a conclusion that an operation is a commercial air tour. Although an operator can use the factors to structure his or her operation, that won't guarantee that the FAA will agree with the operator's opinion of whether his or her operation is a commercial air tour. As a result, operators should do their best to document how their operations do, or do not, fit within the eight factors and, hopefully, their local Flight Standards District Office (FSDO) will agree.

*EDITOR'S NOTE:* Greg Reigel is an attorney with Reigel Law Firm, Ltd., a law firm located in Hopkins, Minnesota, which represents clients in aviation and business law matters ([www.aerolegalservices.com](http://www.aerolegalservices.com), 952-238-1060).

Email your questions or comments to: [greigel@aerolegalservices.com](mailto:greigel@aerolegalservices.com). □

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