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

MAY 17 2007

Joe M. Sapp
Director of Operations
U.S. Helicopters, Inc.
Highway 74 West
Post Office Box 625
Marshville, NC 28103

Dear Mr. Sapp:

By letter dated September 27, 2006, to Donald E. Gardner, Manager, Flight Standards District Office 33, you asked for a legal interpretation about whether U. S. Helicopters could conduct electronic news gathering (ENG) flights under Part 91, instead of Part 135, pursuant to the exception for Aerial Work Operations, "Aerial Photography" contained in 14 CFR §119.1(e)((4)(iii) of the Federal Aviation Regulations.

U.S. Helicopter statement of facts.

U. S. Helicopters has exclusive-use contracts with television stations throughout the United States for the purpose of ENG media photography and reporting with helicopters, during both day and night visual flight conditions. U.S. Helicopters maintains that that all persons on board are flight crewmembers or crewmembers as defined by 14 CFR Part 1, and are employed by U.S. Helicopters or the respective television stations. They also state that the aircraft are not available, or used, for charter flights involving transportation in common carriage of passengers or cargo. Finally, they state that the ENG equipment is permanently installed on the aircraft.

14 CFR 119.1 Applicability.

(e) Except for operations when common carriage is not involved conducted with airplanes having a passenger-seat configuration of 20 seats or more, excluding any required crewmember seat, or a payload capacity of 6,000 pounds or more, this part does not apply to—

(4) Aerial work operations, including—

(i) Crop dusting, seeding, spraying, and bird chasing;

(ii) Banner towing;

(iii) Aerial photography or survey;

(iv) Firefighting;

(v) Helicopter operations in construction or repair work (but it does apply to transportation to and from the site of operations); and

(vi) Powerline or pipeline patrol;

[Docket No. 28154, 60 FR 65913, Dec. 20, 1995, as amended by Amdt. 119–4, 66 FR 23557, May 9, 2001; Amdt. 119–5, 67 FR 9554, Mar. 1, 2002; Amdt. 119–7, 68 FR 54584, Sept. 17, 2003]

The FAA Interpretations

Under old section 135.1(b)(4)(iii) of the Federal Aviation Regulations, a company may supply its aircraft and pilot to a TV station for aerial photography without holding an air carrier certificate. FAA letter to R.H. Tyler, dated August 5, 1975. (Copy enclosed.) The examples of aerial work cited in the regulation, (at that time section 135.1(b)(4)), are not exclusive and other aerial work operations not listed may be included in the provision. FAA Letter to Butler, Hickey & Long, dated June 26, 1989. (Copy enclosed.)

In a 1989 interpretation, the FAA discussed the meaning of "aerial photography" in the context of flights transporting movie crews scouting locations. The FAA noted that the phrase was not defined in the regulations and construed it to mean, or reflect, the common import of the language. The FAA opined that the expression "aerial photography" connotes a condition where taking pictures or filming ***is done from the air***. The second issue was that if the operation also included carrying passengers from one point to another (a dual purpose), the operation would have to be conducted under Part 135, not Part 91. FAA letter to Gerald Naekel dated April 7, 1989. (Copy enclosed.)

Conclusion.

ENG media photography and reporting flights may be conducted under Part 91 pursuant to the aerial work operations, aerial photography, exception in part 119.1(e)(4)(iii) provided each person on board, in addition to the flight crewmembers, is necessary to perform the aerial work operation. Other regulations may impose additional limits. If the flight operation becomes "dual-purpose" (e.g.. the flight lands at point B) then the aerial works exception does not apply.

This response has been prepared by Cecile O'Connor, Attorney in the Regulations Division of the Office of the Chief Counsel and has been coordinated with the Air Transportation Division of Flight Standards Service. If you have additional questions regarding this matter, please contact us at your earliest convenience at (202) 267-3073.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations

Enclosures

would be considered the operator of the aircraft carrying passengers for compensation. A Part 135 Commercial Operator Certificate would be the minimum certificate required. Should enter into leases with sufficient numbers of persons (natural and intangible) to constitute common carriage, an Air Taxi Certificate would be required. For your information some cases bearing one these questions are U.S. v. Harry E. Bradley, et al, 252 F. Supp. 804; B and M Leasing Corporation, et al v. U.S., 331 F. 2d 592; Kyle K. Vess and Dr. David A. McCoy, d/b/a Aeronaut Air Service v. David M. Gardner v. McCoy Flying Service, Inc. 11 Avi. 17,114 and 17,312; Administrator v. Paul Fred Rose, 29 CAB 1523; U. S. v. William M. Muns, 352 F.2d 196; Las Vegas Hacienda, Inc. et al v. CAB, 298 F.2d 430; Administrator v. Golden Eagle Aviation, Inc. N. T. S. B. Docket SE-1395.

Your second question is as follows:

2. Under Part 135, applicability, it includes aerial photography as being covered by that part. A local television station has asked if they could hire the company plane and pilot for the purpose of photographing disasters, etc. Would this operation be a violation of Part 135?

Section 135.1(b) of the Federal Aviation Regulations specifically exempts aerial photography from the requirements of Part 135, therefore, supplying the aircraft and pilot to the TV station for such purpose would not require . to hold a Part 135 certificate.

For your consideration, I refer you to Subpart D of Part 91 of the regulations beginning with Section 91.181. The Mitsubishi MU-2 is a turbojet powered multi-engine aircraft which may be operated under that Subpart. You may wish to consider a time sharing agreement as defined in Section 91.181(c). You should carefully study all of Subpart D to assure compliance with inspection and maintenance as well as operational rqquirements and for information as to what charges may make for the use of its aircraft and pilot. Please refer also to Section 91.54 known as the truth in leasing regulation. It applies to the MU-2.

Our General Aviation District Office at Wiley Post Airport, Bethany, Oklahoma will be pleased to aid you in this matter.

Very truly yours,

R. H. TYLER
Acting Regional Counsel

US Department of Transportation
Federal Aviation Administration

6/26/84

CERTIFIED - RETURN RECEIPT REQUESTED

Phil Hicky, Esq.
Butler, Hicky & Long
Attorneys at Law
P.O. Box 989
Forrest City, AR 72335

Re: Mid-South Helicopters

Dear Mr. Hicky:

This is in response to your letter of June 8, 1989, addressed to the Acting Administrator, wherein you request our opinion as to whether a type of helicopter operation which your client, Mid-South Helicopters ("Mid-South") proposes to provide to various law enforcement agencies in the State of Arkansas, falls within the purview of Part 135 of the Federal Aviation Regulations (FAR). We have been asked to reply.

We understand that Mid-South Helicopters does not hold an air carrier operating certificate issued under Part 135 of the FAR. The company desires to bid on a contract offered by the State of Arkansas to provide aerial surveillance to state and local law enforcement agencies as part of a marijuana eradication program. The primary function of Mid-South would be to fly members of law enforcement agencies over designated areas in search of growing marijuana plants.

Generally, Part 135 applies to:

a. Air taxi operations under authority of 14 CFR 295;

b. Carriage of mail;

c. Carriage in air commerce of persons or property for compensation or hire as a commercial operator (not an air carrier) in aircraft having a maximum seating capacity of less than twenty (20) passengers or a maximum payload capacity of less than 6,000 pounds; or

d. Carriage of persons or property in air commerce (solely intrastate) in common carriage in aircraft having a maximum seating capacity of thirty (30) seats or less or a maximum payload capacity of 7,500 pounds or less.

Although the above designations serve to establish which operators must obtain a certificate issued under Part 135 of the FAR, such operators are now termed "air carriers" and the common thread uniting them under Part 135 is the transportation in air commerce of persons or property for compensation or hire. See Special Federal Aviation Regulations (SFAR) 38-2, as amended, SFAR 38-4, 52 FR 28939 (Aug. 4, 1987) Primarily, the distinctions now serve to determine what operations specifications are needed under Part 135 or 121 of the FAR.

Operations involving the carriage of persons or property for compensation or hire and excluded from Part 135 of the FAR are found in Section 135.1(b). "Aerial work operations" are [illegible] at 135.1(b)(4). While certain examples of excluded aerial work operations are cited, we view these as not being exclusive and certainly other aerial work operations not listed may fall within 135.1(b)(4).

Aerial inspections of fields for the purpose of locating marijuana would appear to be most closely related to either "aerial survey" or "powerline or pipeline partrol or other types of patrol approved by the Administrator" which are excluded at 135.1(b)(4)(iii) and (vi) respectively. Therefore, insofar as the operation contemplated by Mid-South involves the carriage of law enforcement personnel for the purpose of spotting marijuana, that aspect of the activity may be excluded from Part 135.

However, we find it difficult to envision the proposed operation not including flights the primary purpose of which would be to transport personnel. Where the purpose of a flight would be to transport an individual to a meeting place to coordinate a search with others; or to land in a field to obtain samples; or to land in order that the officer aboard could perform an investigatory function, then transportation, rather than surveillance becomes the primary purpose of the flight. Such activities do fall within the ambit of Part 135 and are not excluded under 135.1(b)(4). Such activities require an air carrier operating certificate and appropriate operations specifications.

It is not possible from your letter alone to determine whether the proposed operation requires certification or not. We suggest that you and your client may wish to meet with representatives of the FAA at the Little Rock, Arkansas, Flight Standards District Office to go over in detail all aspects of the operation so that a final decision can be made.

Sincerely,

REYS V. HETTINGER

cc:
Eric E. Anderson
Attorney

Mr. Gerald Naekel

APR 12 1989

Dear Mr. Naekel:

This is in response to your letter of October 24, 1988, wherein you requested an interpretation of FAR 135.1(b)(4)(iii), applicability of Part 135, to flights surveying for wild-life or for forest service data. Your hypothetical question is set forth below and is followed by our interpretation of the regulation as it applies to each of your questions.

"SCENARIO - Surveying 135.1(b)(4)(iii):

Assume we have an FAR 135 Air Carrier certificate and operate several helicopters. Our operations are about 98% FAR 91 flights for the company or operations under FARs 133 and 137. The FAR 135 certificate is required for us because of Forest Service contracts.

One of our contract missions is to conduct aerial survey for wild-life, or for forest survey data. Generally the contractor--who is usually a government entity such as the Forest Service or State Forestry or Fish and Game Department--will send along men to do the counting or marking of trees. Sometimes we are directed to land so the surveyors may get out and look over the trees or investigate animal habitats. Sometimes we shut-down the helicopters; sometimes we do not. Often when we leave we have only a general idea of where we are going and from that point on the surveyors direct us depending on what they are finding.

Often times at the end of the survey we will drop the surveyors off at a site other than where we departed from.

Sometimes the Forest Service requires us to hover over tall trees as they mark the upper branches. This could not be done under FAR 135. Is all of this FAR 91?"

Your Question

"The questions then ask if all of this is conducted under FAR 91 as a commercial operation not requiring the FAR 135 rules?" (sic)

Answer

The answer will depend upon whether the purpose of the flights is for the carriage of passengers or for aerial surveying or both. If the sole purpose is for aerial surveying, then the operation may be conducted pursuant to Part 91. However, if the operation includes carrying passengers from one point to another in addition to the aerial surveying (i.e., dual purpose) then the operation must be conducted in accordance with Part 135.

Your question concerns a Part 135 applicability exception which reads as follows:

> (b) This part does not apply to- ...
> (4) Aerial work operations, including- ...
> (iii) Aerial photography or survey.

Section (b) of FAR 135.1 enunciates exceptions to the general rule of applicability including the aerial surveying exception. This exception, like all exceptions, operates to restrict the applicability of the general rule. The specific language excludes aerial surveying from Part 135 coverage. Thus, if the particular flight is for aerial survey, that operation is not subject to Part 135 rules.

Practically, your letter inquires into the meaning of the phrase "aerial ... survey." In construing the Federal Aviation Regulations, no magical formula or semantic insight is needed. Where a regulation does not define a word or phrase, it must be construed to reflect the common import of its language. The words should be taken to mean nothing more than a dictionary definition, which reports common usage. Clearly, the expression, "aerial ... survey," connotes a condition where something is examined or reviewed from the air.

Consistent with the above concept, the Agency interprets this regulation in a manner that if a helicopter lands at a location other than the point of origin, the surveying exception does not apply. This is due to the fact the flight takes on a "dual purpose" of both surveying and transporting passengers from one point to another for compensation or hire. However, if the helicopter returns to the point of departure without landing at another location, then the surveying exception would apply. Thus, if an operator takes off on a surveying flight under the rules of Part 91 that person must be deemed to recognize that no landing other than at the origin point is permitted and should so inform his passengers before taking off. If the passengers indicate that they might ask for a landing, then the rules of Part 135 should be followed. If they do not so indicate and later change their minds, a prudent operator should decline the request on the grounds that he/she could be subjected to an FAA enforcement action. Indeed, a prudent operator should inquire before the flight to determine what is

contemplated by the passengers. Having so inquired, the operator can determine what rules apply.

The determining factor is whether the helicopter lands at a location other than the point of origin since the landing changes the nature of the operation from an aerial survey operation to a dual purpose operation of both aerial survey and carriage of passengers and/or property. Each flight is considered separately.

In your letter you make the statement:

> "Sometimes the Forest Service requires us to hover over tall trees as they mark the upper branches."

There is not enough information in this statement to provide you an answer. For example, how do the forest service personnel mark the trees? Do they spray or drop something from the helicopter or do they hang in some sort of sling and mark the trees? How is the helicopter certificated? We will need a complete factual description of what occurs in such an operation in addition to answers to these specific questions.

Sincerely,

Original signed by
DONALD P. BYRNE

John H. Cassady
Assistant Chief Counsel