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

Office of the Chief Counsel

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

JUL 28 2010

Mr. Taylor S. Perry
[redacted]

Dear Mr. Perry:

This letter is in response to your May 19, 2010 request for interpretation of 14 C.F.R. § 61.113. You ask whether you can operate a "hobby type aerial photography business," in which you would function as the pilot and photographer, with a private pilot certificate. You note that you would either take photographs from the aircraft to be sold later, or would conduct photography operations for a pre-arranged buyer.

Generally, private pilots are prohibited from acting as pilot in command of an aircraft for compensation or hire. *See* 14 C.F.R. § 61.113(a). However, a private pilot may conduct operations for compensation or hire when the flight is incidental to a business or employment and the aircraft does not carry passengers or property for compensation or hire. *See* § 61.113(b).

You included with your request a copy of a letter addressed to Mr. Pritchard H. White which states that aerial photography or survey operations which do not carry persons or property for compensation or hire may be conducted with a private pilot certificate. This letter distinguishes operations in which the aircraft is used as an aerial platform for other photographers for compensation or hire for which the pilot would need a commercial pilot certificate. This letter was signed by Leland S. Edwards, Jr., an attorney then in the FAA's Northwest Mountain Regional Office. *See* Legal Interpretation to Mr. Pritchard H. White, from Leland S. Edwards, Jr., Attorney (May 11, 1995).

We note, however, that on June 17, 1987 the FAA Chief Counsel's office issued a legal interpretation that stated that an individual must hold a commercial pilot certificate in order to act as pilot in command of an aircraft involved in an aerial photography business. *See* Legal Interpretation to Mr. Wayne M. Del Rossi, from John H. Cassady, Assistant Chief Counsel, Regulations & Enforcement Division (June 17, 1987) (enclosed). To reach that conclusion, the FAA examined whether the photography flights would be incidental to the pilot's business, and found that the "proposed aerial photography business is not an activity, completely unrelated to aviation activities, in which a pilot certificate would be irrelevant to the fundamental character of the business." *Id.* Likewise, this interpretation determined that the pilot would be receiving compensation for the operations in violation of the permissible private pilot privileges. *See id.*

As these interpretations are inconsistent, the FAA must determine which is controlling. Validly adopted legal interpretations issued by the Regulations Division of the Office of the Chief Counsel are coordinated with relevant program offices at FAA Headquarters and have FAA-wide application. Interpretations issued by regional offices generally are not coordinated at the national level. Therefore, in a situation such as this, where two interpretations address an identical scenario and reach an inconsistent result, the interpretation issued by the Assistant Chief Counsel for Regulations takes precedence. Accordingly, the Del Rossi letter is the controlling interpretation in this situation and your proposed operations could not be conducted with a private pilot certificate.

This response was prepared by Dean Griffith, Attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the General Aviation and Commercial Division of Flight Standards Service. Please contact us at (202) 267-3073 if we can be of further assistance.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200

Enclosure

61.118

U.S. Department
of Transportation
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800 Independence Ave., S.W.
Washington, D.C. 20591

17 JUN 1987

Mr. Wayne M. Del Rossi
4577 Calks Ferry Road
Leesville, South Carolina 29070

Dear Mr. Del Rossi:

Mr. David Anderson, Aviation Safety Inspector of the Carolina Flight Standards District Office (FSDO) in Columbia, South Carolina, forwarded your letter of February 24, 1987, and attachments, to this office for reply. As you requested, we have returned Daniel Roth's brochure, Aerial Photography; From Start To Success, under separate cover. In your letter, you requested an interpretation of the Federal Aviation Regulations (FAR's) as they may apply to your proposed aerial photography business and your private pilot certificate.

As you are aware, section 61.118 sets forth the privileges and limitations of your private pilot certificate. That section states, in pertinent part, that a private pilot may not, for compensation or hire, act as pilot in command of an aircraft. An exception to that section states that a private pilot may, for compensation or hire, act as pilot in command of an aircraft in connection with any business or employment if the flight is only incidental to that business or employment and the aircraft does not carry passengers or property for compensation or hire.

Where it is doubtful that an operation is for "compensation or hire," the test applied is that included in the definition of a commercial operator under Part 1 of the FAR's; namely, whether the flight is merely incidental to the pilot's business or is, in itself, a major enterprise for profit. The proposed aerial photography business is not an activity, completely unrelated to aviation activities, in which a pilot certificate would be irrelevant to the fundamental character of the business. Quite clearly, flight operations are a substantial and integral part of an aerial photography business. The fact that the photographs were taken from an aircraft is a strong selling point for a customer. In addition, although you state that finding customers, developing pictures, and selling finished photographs would be a large part of your business, the essential feature of your proposed business is tied to the operation of an aircraft.

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Neither the percentage of aircraft use, the amount of flight time, nor the prices charged for your product are relevant to this analysis. The critical issue is whether you are being compensated, either directly or indirectly, for flight operations. "Compensation or hire" has been held to include furthering one's economic interest. Therefore, if you receive any money in connection with your aerial photography business, even if it merely pays for your flight time and results in no other financial benefit, you would be furthering your own economic interest.

Contrary to your claim that the pilot is not being compensated for acting as pilot in command of an aircraft, the customer is receiving, and is being charged for, a service in flight operations performed by a private pilot in violation of section 61.118. Moreover, so long as you present yourself as ready to accept compensation related to your proposed business, the fact that you do not disclose actual costs related to flight operations does not alter the fact that you would be acting as pilot in command of an aircraft for compensation or hire.

To comply with the FAR's, you must hold a commercial pilot certificate in order to act as pilot in command of an aircraft as part of your proposed aerial photography business.

I trust that this satisfactorily responds to your inquiry.

Sincerely,

for Richard C. Leitel

John H. Cassady
Assistant Chief Counsel
Regulations & Enforcement Division

cc: David Anderson