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

Office of the Chief Counsel

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

SEP 07 2011

Ray Bonilla, Esq.
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2700 Bee Caves Road
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Dear Mr. Bonilla:

This letter is in response to your May 3, 2011 request for legal interpretation of 14 C.F.R. § 119.1(e) regarding aerial work operations and, in particular, seeking clarification of the letter issued by the FAA to Mr. Jeff Lieber on January 12, 2011.

First, we note that after receiving your letter we reviewed the letter to Mr. Lieber which reached the conclusion that an aerial photography operation, with a passenger for hire on board the aircraft, would not be operating in accordance with the aerial work exception of § 119.1(e)(4) if it stopped to refuel at a location other than from where it took off. As a result of this review, we have determined that interim stops are allowed for the limited purpose of meeting aircraft or human needs. Accordingly, we are withdrawing the interpretation issued to Mr. Lieber and issuing this interpretation in its place.

In your letter you described a scenario in which "ABC Company" is asked by a client to transport survey equipment with the purpose of conducting infrared videography along the length of a power transmission line or pipeline extending for several hundred miles across multiple states. A person not employed by the company is carried aboard the aircraft to operate the survey equipment. The distance covered by the survey requires that the aircraft land periodically so it may be refueled. The distance also requires that the crew make overnight stops for meals and rest.

You asked three questions pertaining to the scenario above. First, may a helicopter operator conducting operations under § 119.1(e)(2) or (e)(4) make a landing to address aircraft or human needs? Second, may the person carried aboard the aircraft that operates the survey equipment remain at the location where the survey is concluded, or may he return in the aircraft to the survey starting point? Third, you ask whether the FAA considers an operator to be engaged in common carriage when it holds it self out to the public for hire, but limits its operations to those authorized under § 119.1(e)(2) or (e)(4)?

I. Landings to address aircraft or human needs.

In general, when a flight involves the carriage of persons or property for compensation or hire, the operator is required, by part 119, to hold an air carrier or commercial operator

certificate and operate such flights in accordance with the appropriate rules found in parts 121 or 135. Section 119.1(e) provides an exception to that rule for several categories of operations such as "aerial work operations," which includes "powerline or pipeline patrol" and "aerial photography," and "nonstop commercial air tours." *See* 14 C.F.R. § 119.1(e)(2), (4). Persons conducting operations described in § 119.1(e) do not need to hold a part 119 operating certificate and may conduct these operations under part 91 rules.

However, when these operations have a "dual-purpose," meaning, for example, that an operation is conducted for both pipeline patrol and transporting passengers for compensation or hire, then the § 119.1(e) exception would not apply to that operation. *See* Legal Interpretation to Bob Shaw, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Feb. 4, 2008); Legal Interpretation to Joe M. Sapp, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (May 17, 2007).

The FAA has held that an aerial works flight that lands at a place other than the where it departed would generally assume a dual purpose. Previous FAA legal interpretations have stated that "if the operator takes off on a surveying flight under the [aerial work exception] 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." Legal Interpretation to J. Robb Cecil, from Donald P. Byrne, Acting Assistant Chief Counsel, Regulations and Enforcement Division (Apr. 28, 1990); Legal Interpretation to Gerald Naekel, from John H. Cassady, Assistant Chief Counsel (Apr. 12, 1989). Likewise, the FAA has held that aerial photography operations assumed a "dual-purpose" when a flight landed at a destination different from the point at which it departed. *See* Legal Interpretation to Shaw ("Examples of aerial work operations include flights that have the same departure and destination points . . . ."); Legal Interpretation to Sapp ("If the flight operation becomes 'dual-purpose' (e.g. the flight lands at point B) then the aerial works exception does not apply."); Legal Interpretation to Cecil; Legal Interpretation to Naekel.

However, the FAA has also recognized an exception to the general rule for landings for aircraft or human needs. *See Administrator v. Southeast Air, Inc.*, NTSB Order No. EA-1825 at fn 8 (Aug. 26, 1982), 1982 WL 44935 (N.T.S.B.) ("The Administrator concedes that a landing for the purpose of aircraft refueling or human needs would not take the flight out of the aerial photography exception."); *In the Matter of: Conquest Helicopters, Inc.*, FAA Order No. 95-25 (Dec. 19, 1995), 1995 WL 853895 (noting the exception made for landings for "aircraft or human needs").

Accordingly, an aerial work flight that meets the exceptions articulated in § 119.1(e)(4) could land at a location, other than from which it departed, and remain under the exception to part 119 if the stop at the non-departure point location is limited to refueling or human needs. Operators would be prohibited from picking up additional passengers or property and no work such as pipeline inspection, photography, or filming, would be permitted while the aircraft is on the ground.

You asked the same question pertaining to nonstop commercial air tours operated pursuant to the § 119.1(e)(2) exception. We note that stops for refueling or human needs would be

permitted, but caution that commercial air tours operated under § 91.147 are limited to operations within a 25 mile radius of the take off location and we do not anticipate the need for refueling or human needs stops during such a limited flight. Additionally, if such stops are made, they must not be used as a means of permitting passengers to explore or tour a location on the ground. Doing so would have the effect of creating a dual purpose flight for which a part 119 operating certificate would be needed.

II. Returning the passenger to the survey starting point.

Next, you asked whether the person carried on board the aircraft to conduct the aerial survey may remain at the location where the survey is concluded because the purpose of the transportation has concluded, or whether ABC must return that person to the starting point of the survey. As discussed above, if the flight takes on a dual purpose than it would need to be conducted under an operating certificate. A person who boards the aircraft at the survey's starting point must be returned to the starting point. Otherwise, the flight would take on the dual purpose of transporting the passenger from "A" to "B." *See* Legal Interpretation to Naekel (Apr. 12, 1989).

III. Common carriage.

Finally, you asked whether the FAA considers ABC company to be engaged in common carriage when it holds itself out to the public for hire, but limits its operations to those authorized under § 119.1(e)(2) or (e)(4). A person is engaged in common carriage when "(1) holding out a willingness to (2) transport persons or property (3) from place to place (4) for compensation. *See* Advisory Circular 120-12A (Apr. 24, 1986). Whether or not ABC company is a common carrier, it would, at a minimum, be considered a "commercial operator" because it "engages in the carriage by aircraft in air commerce of persons or property." *See* § 1.1 (defining "commercial operator"). Accordingly, but for the exceptions of § 119.1(e)(2) and (e)(4), its operations would need to be conducted pursuant to a part 119 operating certificate. *See* § 119.1(a)(1).

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

Sincerely,

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