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

Office of the Chief Counsel

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

December 19, 2013

Mr. David Josephson
[redacted]

Dear Mr. Josephson:

This responds to your letter dated March 14, 2013, in which you requested a determination as to whether you may operate an amateur-built aircraft in aerial survey operations involving the development and operation of magnetic sensors that you own and which will be attached to the aircraft. The FAA has issued an experimental certificate for the aircraft. You state that the operations would be consistent with the operating limitations attached to the certificate issued for the aircraft to be used in the operations. You also state that your primary business is in a different area of engineering and that no other persons or property will be carried aboard the aircraft. Additionally, you note that subsequent to the flights, other persons may be interested in the data you collect and may want to purchase copies of the data. You ask whether you may receive payment for the data obtained during those flights.

You also ask whether an aircraft issued a special airworthiness certificate in the light-sport category or an aircraft issued an experimental certificate for the purpose of operating a light-sport aircraft may be used to conduct aerial survey operations when the operator of the aircraft is the owner of the equipment and payment is received for data obtained during the conduct of those flights.

The FAA does not impose a complete prohibition on the use of experimental aircraft for compensation or hire. Unless other limitations also apply, the FAA has taken the position that such operations may be conducted provided the operator complies with the provisions of both Title 14, Code of Federal Regulations (14 CFR) § 91.319(a)(1) and (a)(2). *See* Legal Interpretation to Gregory S. Winton (February 14, 2013).

Section 91.319 sets forth operating limitations applicable to all aircraft issued experimental certificates. Paragraph (a) of that section states that:

> (a) No person may operate an aircraft that has an experimental certificate —
> (1) For other than the purpose for which the certificate was issued; or
> (2) Carrying persons or property for compensation or hire.

With respect to the conduct of the proposed operations in an aircraft issued an experimental certificate for the purpose of operating an amateur-built aircraft under 14 CFR § 21.191(g), it does not appear that the conduct of those operations would violate the broad purpose for which the certificate was issued. Such operations would therefore be in accordance with § 91.319(a)(1). This determination assumes that the major portion of the aircraft was indeed fabricated and assembled by persons who undertook the construction project solely for their own education or recreation.

Additionally, you stated that you would not be carrying persons or property for compensation or hire. Accordingly, the use of your aircraft for the development and operation of magnetic sensors owned by you would not be specifically prohibited by paragraph (a)(2) of § 91.319, even if payment is received for data collected by those sensors subsequent to the conduct of the flights.

However, you should also note that under § 91.319(i) the FAA may issue additional operating limitations necessary for the operation of any experimental aircraft and that these limitations must also be complied with during the conduct of the operations. Paragraph 4104.b.(1) of FAA Order 8130.2G, *Airworthiness Certification of Aircraft and Related Products,* states that the following limitation shall be issued for all experimental amateur-built aircraft:

> No person may operate this aircraft for other than the purpose of meeting the requirements of 14 CFR § 91.319(b) during phase I flight testing, and for recreation and education after meeting these requirements as stated in the program letter (required by14 CFR § 21.193) for this aircraft.

If this or a similarly worded operating limitation has been prescribed for the aircraft conducting the proposed operations, the operations could not be conducted unless they were solely for the purpose of recreation and education.

You should also be aware of the significant restrictions placed on holders of sport, recreational, and private pilot certificates. The specific facts surrounding the conduct of the flights and the receipt of compensation for the data collected during these flights could necessitate that you hold at least a commercial pilot certificate to conduct the proposed operations.

With respect to the conduct of the proposed operations in aircraft issued experimental certificates for the purpose of operating light-sport aircraft under § 21.191(i), additional limitations have been placed on the operation of these aircraft. Section § 91.319(e) states that:

> (e) No person may operate an aircraft that is issued an experimental certificate under § 21.191(i) of this chapter for compensation or hire, except a person may operate an aircraft issued an experimental certificate under § 21.191(i)(1) for compensation or hire to—
> (1) Tow a glider that is a light-sport aircraft or unpowered ultralight vehicle in accordance with § 91.309; or
> (2) Conduct flight training in an aircraft which that person provides prior to January 31, 2010.

As this regulation prohibits the receipt of any compensation or the use of the aircraft for hire except in the limited circumstances specified, the use of an aircraft issued an experimental certificate for the purpose of operating a light-sport aircraft under § 21.191(i) would be prohibited except in the narrow circumstances specified in the regulation. Accordingly, the use of such an aircraft for data collection where compensation is received for the data collected would be prohibited.

The FAA has also placed significant restrictions on the use of aircraft issued special airworthiness certificates in the light-sport category under 14 CFR § 21.190. Section 91.327(a) states that:

> (a) No person may operate an aircraft that has a special airworthiness certificate in the light-sport category for compensation or hire except—
> (1) To tow a glider or an unpowered ultralight vehicle in accordance with § 91.309 of this chapter; or
> (2) To conduct flight training.

As this regulation also prohibits the receipt of any compensation or the use of the aircraft for hire except in the limited circumstances specified, the use of an aircraft issued a special airworthiness certificate in the light-sport category under § 21.190 would be prohibited except in the narrow circumstances specified in the regulation. Accordingly, the use of such an aircraft for data collection where compensation is received for the data collected would also be prohibited.

You also wish to confirm whether the exception specified in 14 CFR §119.1(e)(4)(iii) for aerial work operations would permit such operations to be conducted using aircraft issued experimental certificates, or special airworthiness certificates in the light–sport aircraft category. To the extent that such operations would be permitted to be conducted pursuant to operating limitations issued for the aircraft, the exception to the requirements of part 119 set forth in § 119.1(e)(4)(iii) would remain applicable.

This interpretation was prepared by Paul Greer, an attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the General Aviation and Commercial Division (AFS-800) of the Flight Standards Service and the Production and Airworthiness Division (AIR-200) of the Aircraft Certification Service. If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

Mark W. Bury
Assistant Chief Counsel for International
Law, Legislation, and Regulations