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

Office of the Chief Counsel

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

APR 16 2013

Doug McQueen
[redacted]

Dear Mr. McQueen,

This letter is in response to your request for a legal interpretation regarding 14 CFR§ 119.1(e) and the operation of "military experience" flights.

You pose several questions about whether specific exceptions listed in § 119.1(e) apply to a "military experience" flight, which you describe as a "flight that is intended to demonstrate to a civilian participant the planning, strategy, physics, equipment and execution of a military training mission" and that after a "one-hour briefing on the concepts of military training and an introduction to the equipment, participants would engage in a one-hour flight that executes the planned mission, including aerobatics." You also refer to these operations as "historic military aircraft rides," "barnstorming" and "air combat" rides. For the purposes of this legal interpretation, we will refer to these operations as military experience flights. Additionally, you explain that the flights would be conducted in an FAA certified standard category aircraft by pilots with commercial pilot ratings, carrying one participant at a time. Participants in these flights are not "student pilots" as they have no intention of pursuing a pilot rating or using the military experience flight towards any further flight qualifications. The FAA assumes that the passengers of these flights are not manipulating the aircraft's controls at any point during the operation. Background information, summary of your three questions and the FAA's responses follow below.

Background:

In general, when a flight involves the carriage of persons or property for compensation or hire, the operator must hold a part 119 air carrier or commercial operator certificate and operate such flights under part 121 or 135 rules. *See* Legal Interpretation to Gregory S. Winton from Mark W. Bury, Acting Assistant Chief Counsel for International Law, Legislation, and Regulations (Feb. 14, 2013). However, part 119 provides certain exceptions for several categories of operations involving the use of an aircraft for compensation or hire, such as commercial air tour operations. These operations may be operated without a part 119 certificate, under part 91 rules, provided certain conditions are met. *See* §§ 91.147, 110.2, & 119.1(e).[1]

[1] Specifically, § 119.1(e)(2) provides an exception for nonstop commercial air tours in an airplane or helicopter, having a standard airworthiness certificate and a passenger-seat configuration of 30 seats or fewer

Question 1:

May operators conduct military experience flights under the 14 CFR 119.1(e)(2) exception for sightseeing operations?

Yes. An operator may obtain a Letter of Authorization (LOA) from the FAA, issued under § 91.147, to operate a military experience flight under the commercial air tour exception of § 119.1(e) so long as the requirements of § 91.147 and § 119.1(e)(2) are satisfied. The FAA defines a commercial air tour as "a flight conducted for compensation or hire…where a purpose of the flight is sightseeing." *See* § 110.2 (listing eight factors that the FAA may consider when determining whether a flight is a commercial air tour). The language of the definition does not require that an operation meet a certain number of the factors listed, nor does it require that the operation meet any of the factors in the list for the FAA to find an operation to be a commercial air tour. *See* Legal Interpretation to Michael S. Mason from Rebecca B. MacPherson, Assistant Chief Counsel for International Law, Legislation, and Regulations (Oct. 23, 2012).

As described in the National Air Tour Safety Standards Final Rule, the FAA considers the overall character of a military experience flight "to be sightseeing, even if a primary purpose may be the experience of flight in an historic aircraft." *See* id; National Air Tour Safety Standards Final Rule, 72 Fed. Reg. 6884, 6894 (Feb. 13, 2007). Therefore, the commercial air tour exception in § 119.1(e)(2) allows persons conducting military experience flights using aircraft with standard airworthiness certificates[2] to operate under part 91 rules rather than part 135. The FAA reiterates, however, that these operators must comply with the process provided by the FAA to allow an operator to apply for and receive an LOA obtained through the operator's FSDO. *See* Air Tour Final Rule, 72 Fed Reg. 6894.

Question 2:

Could the "training flights" exception listed under 14 CFR § 119.1(e)(3) be used by an operator of the military experience flights described above?

No. An operator may not use the training flights exception listed under § 119.1(e)(3) to conduct military experience flights. As described above, if an operator wishes to conduct a military experience flight in a standard category aircraft, it may do so under the § 119.1(e)(2) exception to conduct a commercial air tour under part 91.

---

and a maximum payload capacity of 7,500 pounds or less that begin and end at the same airport, and are conducted within a 25-statute mile radius of that airport, in compliance with the Letter of Authorization issued under § 91.147.

[2] Military experience or barnstorming operators conducting flights under § 91.147 must operate aircraft with a standard airworthiness certificate (not Limited, Restricted, or Experimental Categories). The FAA is aware that many of the aircraft used in these types of experience flights can never have standard airworthiness certificates and instead operate under an exemption. These operators will continue to need an exemption from the standard airworthiness requirement for all compensation or hire aircraft operations. *See* Air Tour Final Rule, 72 Fed Reg. 6894; §§ 91.313, 91.315, 91.319.

Additionally, in regards to this question, you asked for clarification as to why an operator that already holds an air carrier or operator's certificate would need to utilize an exception in 14 CFR 119.1 to conduct a training flight. The FAA clarifies that an operator that holds a part 119 air car6rier or commercial operator certificate to conduct part 121 or 135 operations may choose to conduct some of their flights, such as training flights, under the less stringent Part 91 rules. Therefore, while they may already have an air carrier or commercial operator certificate to conduct part 121 or 135 operations, the less stringent operating rules of part 91 may be utilized where a part 119 certificate is not required for certain flights.

Question 3:

Can a commercial pilot who is not a certified flight instructor (CFI) carry a customer for hire on a training flight to conduct training that is not related to any qualification? Could a commercial pilot that is not a CFI conduct the military experience flight described above?

As to your first question, the FAA clarifies that when a pilot (that is not a CFI) carries a customer for compensation or hire on a flight that is not related to any training qualification, that this does not constitute a training flight. *See* §§ 61.193, 61.195 & 61.133. Therefore, the requirements to carry a passenger for compensation or hire in §§ 91.147, 119, 121, and 135 would apply, depending on the aircraft and type of flight. You did not provide sufficient information as to the type of operation to further describe the necessary requirements to conduct this flight for compensation or hire.

In reference to the second part of your question, a commercial pilot, whether a CFI or not, can conduct a military experience flight so long as the appropriate requirements, as described above in question 1, are satisfied.

We appreciate your patience and trust that the above responds to your concerns. This response was prepared by Nancy Sanchez, an attorney in the International Law, Legislation, and Regulations Division of the Office of the Chief Counsel, and was coordinated with the General Aviation and Commercial Division of Flight Standards. Please contact us at (202) 267-3073 if we can be of further assistance.

Sincerely,

Mark W. Bury
Acting Assistant Chief Counsel for
International Law, Legislation, and Regulations
AGC-200