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

Office of the Chief Counsel

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

MAY 17 2013

Randy Hurst
[redacted]

Dear Mr. Hurst:

This letter responds to your request for a legal interpretation dated January 26, 2013. Specifically, you have asked about exercising the privileges of a private pilot certificate in connection with business employment when the flight is only incidental to that business or employment.

In your letter you provide the following facts. You are the non-flying Director of Aviation for a private energy company that operates a fleet of four business jets and two helicopters under 14 C.F.R. part 91. You hold an airline transport pilot certificate but cannot exercise the privileges of that certificate for medical reasons. You anticipate that you will soon receive a third-class medical certificate that will allow you to exercise private pilot privileges. You would like to act as pilot in command of one of your company's aircraft, a Cirrus SR-22, on flights "that may be beneficial to [the] company but would only be incidental to [the] business and would not involve carrying passengers or property for hire or compensation." You state that all flights would take place in the company-owned aircraft, and the company would pay all expenses related to the flights.

Section 61.113 generally prohibits a private pilot from acting as pilot in command of an aircraft for compensation or hire. Under § 61.113(b), 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.

Based on the facts that you have provided, you ask whether you would be permitted under § 61.113(b) to act as pilot in command during the following types of flights associated with your company's business:

(1) flights for delivering or picking up company correspondence such as packages and envelopes;
(2) flights for transporting company pilots to and/or from maintenance, training sessions, etc;
(3) test flights after maintenance or to diagnose maintenance issues;
(4) flights for aerial observation of company homes, businesses, private airstrips, and ranches; and

(5) flights that are to operate the aircraft to full performance for long periods of time (1-2 hours) in order to prevent the aircraft from deteriorating into a non-airworthy condition.

The first two examples that you have provided would not be permissible under § 61.113(b) because each flight would violate the second condition of that paragraph, specifically the prohibition against carrying property (company correspondence) or passengers (company pilots) for compensation or hire.[1] 14 C.F.R. § 61.113(b)(2). While the FAA has consistently indicated that a private pilot may transport himself or herself to conduct business for a company under § 61.113(b), the pilot may not transport other employees of the company. See Legal Interpretation to Guy Mangiamele, March 4, 2009; Legal Interpretation to Ronald Lamb, March 1, 2010.

With regard to aerial observation of company property, if it is a foreseeable and regular part of the energy company's business, then you would not be permitted to conduct those flights with a private pilot certificate under 61.113(b). In a prior legal interpretation, we found that aerial observation of power lines was not incidental to the business of the power company but rather was a "foreseeable and normal" part of the business. See Legal Interpretation to David Ahlstrand, Sept. 6, 1990.

With regard to test flights after maintenance or to diagnose potential maintenance problems, we believe these flights would be incidental to your company's main line of business. Although maintenance of aircraft is necessary to support the aviation activities of the company, maintenance is an activity that is not directly related the company's energy business. We reiterate that, under § 61.113(b)(2), no passengers or property may be carried during these flights.

Finally, we do not have sufficient information to provide a complete answer to your question about flights that operate the aircraft to full performance for long periods of time to prevent the aircraft from deteriorating into a non-airworthy condition.

This response was prepared by Anne Moore, an attorney in the International Law, Legislation, and Regulations Division of the Office of the Chief Counsel, and has been coordinated with the Airman Certification and Training Branch of Flight Standards Service. If you have any additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

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

[1] Pilots who are not serving as required crewmembers are passengers under the regulations.