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

Office of the Chief Counsel

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

FEB 14 2013

Gregory S. Winton
The Aviation Law Firm
One Research Court, Suite 450
Rockville, MD 20850

Dear Mr. Winton:

This letter is in response to your request for a legal interpretation received on October 19, 2012 regarding 14 CFR § 91.319 and the receipt of revenue for aerial survey operations in an aircraft with an experimental airworthiness certificate.

You indicate in your letter that your client owns a gyroplane aircraft with an experimental airworthiness certificate. Your client intends to operate the aircraft for the sole purpose of conducting aerial survey work. You further state that all flights will be conducted within the operating limitations of the aircraft and that during the proposed flights, data-gathering equipment will be attached as a fixture on the aircraft, and will not be carried as property or cargo of another.

You raise two specific questions. Those questions and our responses follow below:

1. If the client conducts an aerial work operation, while carrying its own equipment and employees aboard the gyroplane (operated under an experimental airworthiness certificate), and the company receives payment for the aerial survey data, is there a violation of 14 CFR §§ 91, 119, or 135?

2. If the client conducts a "dual purpose" flight operation (i.e. aerial work, in addition to repositioning the gyroplane), while carrying its own equipment and employees, and the company receives payment for the aerial survey data, is there a violation of 14 CFR §§ 91, 119, or 135?

Analysis:

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. However, part 119 provides certain exceptions for several categories of operations involving the use of an aircraft for compensation or hire, such as aerial work operations,[1] and those operations are excluded from the certification requirements of part

[1] The FAA has consistently interpreted the term "aerial work" to mean work done from the air with the same departure and destination points, no property of another is carried on the aircraft, and only passengers essential to

119. *See* § 119.1(e)(4); Legal Interpretation to Jeffrey Hill from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Mar. 10, 2011). Persons conducting operations described in § 119.1(e) may conduct those operations under part 91 rules.

Furthermore, § 91.319(a) states that no person may operate an aircraft that has an experimental certificate for other than the purpose for which the certificate was issued or for carrying persons or property for compensation or hire. *See* 14 CFR § 91.319(a)(1)-(2); 14 CFR § 21.191 Experimental certificates ; *see also* Legal Interpretation to Bob Shaw from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Feb. 4, 2008); Legal Interpretation to Charles Harris from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Jan. 30, 2009).

Question 1:

First, we must analyze whether operation of your client's aircraft is consistent with the purpose for which its experimental certificate was issued as set forth in § 91.319(a)(1). You state in your request that "all [of your client's] flights will be conducted within the operating limitations of the aircraft," but you do not provide further details as to what those limitations are or whether the operating limitations relate to the purpose for which the experimental certificate was issued. As described above, § 91.319(a)(1) specifically prohibits a person from operating an aircraft with an experimental certificate for anything other than the purpose for which the certificate was issued. Experimental certificates are issued for various purposes, as listed in § 21.191(a)-(i).[2] As your request does not describe the purpose for issuing the experimental certificate to the aircraft, the FAA is unable to verify whether your client's proposed operations are allowed under § 91.319(a)(1). Furthermore, the FAA cautions that unless your client's experimental certificate was issued to allow aerial work, your client may be in violation of § 91.319(a) if its operations are not within the scope of its experimental certificate as issued under § 21.191.

Second, assuming the operation complies with § 91.319(a)(1), we must analyze whether this operation constitutes carrying persons or property of another for compensation or hire as prohibited by § 91.319(a)(2). You indicated that your client will carry its own employees aboard the gyroplane during the aerial work operation and that the data-gathering equipment will be attached to the aircraft and will be considered a fixture, rather than cargo that is transported from place to place. The FAA has consistently taken the position that an operation for compensation or hire is prohibited under § 91.319(a)(2) when it involves the transportation by air of persons or property of another but not when it involves transportation of the operator's employees or property. *See* Legal Interpretation to Bob Shaw (Feb. 4, 2008). Data-gathering equipment that is attached to the aircraft and approved under a field approval is considered to be a fixture, instead of property or cargo of another that is transported from place to place. *See* Legal Interpretation to Jeffrey Hill (Mar. 10, 2011).

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the operation are carried on board the aircraft. *See* Legal Interpretation to Jeffrey Hill from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Mar. 10, 2011).

[2] Experimental certificates are issued for the following purposes: (a) Research and development, (b) Showing compliance with regulations, (c) Crew training, (d) Exhibition, (e) Air racing, (f) Market surveys, (g) Operating amateur-built aircraft, (h) Operating primary kit-built aircraft, and (i) Operating light-sport aircraft. 14 CFR 21.191.

Additionally, part 119 contains exceptions for operators who must otherwise obtain a certificate authorizing operations under part 121, 125, and 135. Aerial work generally does not require a part 119 certificate authorizing operations under part 135. *See* § 119.1(e)(4). This, however, does not relieve your client from the prohibition on using an experimentally-certified aircraft for carrying persons or property for compensation or hire. Your client may not need to obtain a part 119 certificate, but would not be relieved from the general operating requirements of part 91. *See* Legal Interpretation to Charles Harris (Jan. 30, 2009).

The FAA reiterates that the operator must satisfy both § 91.319(a)(1) and § 91.319(a)(2). Therefore, this operation would only be in compliance with § 91.319(a) if your client is (1) operating the aircraft with an experimental certificate for the purpose for which the certificate was issued, and (2) carrying only the operator's own employees (who are essential to the aerial work operation) and property while conducting the aerial work operations.[3]

Question 2:

If an operator that is approved to do aerial work instead conducts a "dual purpose" flight, then the § 119.1(e) aerial work exception would not apply to that operation. For example, the FAA has held that an aerial work flight that lands at a place other than where it departed would generally assume a "dual purpose," meaning, for example, that the operation is conducted for both aerial work and for transporting passengers for compensation or hire. *See* Legal Interpretation to Ray Bonilla from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Sept. 7, 2011). We do not have sufficient information in your request to make a specific determination of whether the operations you describe would be considered a "dual purpose" flight in this context. Therefore, the FAA cautions that conducting such "dual purpose" flights may not fall under the aerial work exception in § 119.1(e) and a part 119 operating certificate may be needed to conduct such operations.

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

[3] Note that § 91.319(b)-(i) contains additional restrictions on the use of aircraft with an experimental certificate. The FAA encourages you to consult these sections for further information on the regulations governing aircraft with experimental certificates.