U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

JUN 24 2016

Mona Bentz
1351 Sawgrass Corporate Parkway, Suite 101
Sunrise, FL 33323

Re: Applicability of § 91.501(b)(2) and/or § 119.1(e)(4)(iii) to proposed aerial photography operation

Dear Ms. Bentz:

This letter is in response to your January 25, 2016 request for interpretation of 14 C.F.R. § 91.501(b)(2) and/or § 119.1(e)(4)(iii). You ask a series of questions related to a mapping/aerial photography business, which are discussed sequentially below.

In your request for interpretation, you provide analysis of § 91.501(b)(2) and § 119.1(e)(4)(iii), which allow for aerial work operations, such as aerial photography, to be conducted under Part 91 instead of under an operating certificate when common carriage is not involved. The operation you proposed involves a photographer who boards and disembarks either at the aircraft base or at the location of the photography and specifically includes repositioning flights which may include stops limited to human and aircraft need.[1]

For the purpose of analyzing your request, please consider three points for illustration: A, B, and C. In Scenario 1, a repositioning flight from Point A to Point B occurs with only the pilot on board, and the flight from Point B to Point C occurs with the pilot and photographers on board, who conduct aerial photography while in transit.

In Scenario 2, a repositioning flight from Point A to Point B occurs with the pilot and photographers on board, and a flight from Point B to Point C occurs with the pilot and photographers on board, who conduct aerial photography while in transit.

As stated in your analysis, an aerial photography operation can be conducted pursuant to § 91.502(b)(2). However, if the operation serves a dual purpose it cannot be operated under part 91 and would require an operating certificate. For example, the flight from Point B to Point C described in Scenarios 1 and 2 would be an aerial photography operation.

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[1] *Legal Interpretation to Ray Bonilla* (Sept. 7, 2011).

The FAA reiterated in a 2013 legal interpretation regarding the aerial work operations exception to § 119.1(e) that a flight serving a dual purpose does not fall under the aerial works exception.[2] In the scenario you provided, a flight that has the dual purpose of transporting passengers (the photographers) and repositioning the plane would not fall under the aerial works exception, and would therefore require an operating certificate for that operation. For example, Point A to Point B in Scenario 2 would be a dual purpose flight because you are both repositioning the plane and transporting photographers to an operation site.[3] A flight from Point A to Point B in Scenario 1 would not be a dual purpose flight because the sole purpose of the flight is to reposition (the pilot is not carrying passengers).

With respect to your question regarding whether the above questions would be impacted if the pilots were required to divert to a different airport due to emergency or current airport conditions, a diversion does not turn a non-common carriage flight into a common carriage flight and therefore would not change the regulation under which the operation occurs. An aerial photography operation does not purport to transport a passenger from one airport to another and therefore does not satisfy the "holding out" element of common carriage, as per Advisory Circular 120-12A.[4]

Additionally, regarding your fourth question, if a Letter of Authorization is required for an operation, the regulation would stipulate such requirement.

We appreciate your patience and trust that the above responds to your inquiry. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Courtney Freeman, an attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the Flight Standards Service.

Sincerely,

Lorelei Peter
Assistant Chief Counsel for Regulations

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[2] *Legal Interpretation to Gregory Winton* (Feb. 14, 2013).

[3] There may be other exceptions that apply to this scenario that would allow the operation to occur under part 91, but you did not ask about these exceptions and therefore we did not address them in this interpretation.

[4] The FAA assumes you are not advertising your willingness to divert.

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January 25, 2016

Ms. Lorelei A. Peter, Assistant Chief Counsel (Acting)
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Washington, DC 20591

Re: Applicability of § 91.501(b)(2) and/or § 119.1(e)(4)(iii) to proposed aerial photography operation

Dear Ms. Peter:

My client ("Company") would like to establish a mapping business, which would include an aerial photography component. In evaluating the appropriate structure of potential related business entities Company is considering the consequences of segregating the aerial photography portion of the business. Before moving forward, Company would like to confirm whether the operation would fall under Part 91 and is seeking a legal interpretation of the federal aviation regulations (FARs) enumerated below.

FACTS

Under the proposed structure and operation, Parent A would conduct a 3D mapping business. Parent A would have three subsidiaries. Sub B and Sub C would own one or more aircraft, Sub D would operate the aircraft pursuant to dry lease or operating agreements with Subs B and C. The operation of Sub D would be to conduct flights for purposes of taking aerial photography, provide pilots and take responsibility for the operation and maintenance of the aircraft.

The proposed aircraft are turbojets certified under Part 25 of the FARs with fewer than 20 seats and less than a maximum payload capacity of 6,000 pounds. The aircraft would not be configured to carry more than the required two pilots and personnel required to operate the photography equipment. The aircraft would be modified with special equipment to conduct the requisite aerial photographs. The Certificate of Airworthiness category for the aircraft would be standard even with the modifications.

Sub D would provide flights for only Parent A. It would not hold itself out for compensation or hire. The operation of Sub D would be national in scope, but conducted within the limitations of the Type Data Certificate Sheet supplement for the specific modifications of the aircraft. Pilots would be employed by Sub D and would hold a commercial pilot license.

Stops during repositioning flights for aircraft and human needs, including refueling, eating and resting overnight, may be necessary for some photography flights particularly when the target location is across country from the operations base. Non flightcrew passengers would be limited to one or more contract photographers needed to operate the photography equipment during flight. The photographer may be an employee of Parent A or of a related or unrelated company. The contract photographer may join the entire repositioning flight, in which the photographer would board at the aircraft base and disembark at the base after repositioning, photographing, and returning the aircraft to base. In addition, the photographer could join only a portion of the repositioning flight (boarding and disembarking at a permissible stop during outbound repositioning flight and disembarking at the same stop during the reposition of the aircraft back to base), or board and disembark at the photography location. The photographs would be provided to Parent A for use in creating maps. Parent A would reimburse Sub D for all operational costs of the aircraft, flights and necessary personnel, such as pilot salaries and including any cost incurred by Sub D in contracting the photographer.

QUESTIONS AND ANALYSIS

Question: Does the foregoing operation qualify under the exceptions of §§91.501(b)(2) and/or 119.1(e)(4)(iii) of the FARs thereby enabling Sub D to operate under Part 91 or would Sub D require an operating certificate under Part 135 for this operation?

§91.501(b)(2)

14 CFR Subchapter F governs general operating rules and air traffic. Part 91 specifically governs general operating and flight rules. Subpart F applies to turbine-powered multiengine airplanes. Section 91.501(a) provides that the operating rules of the subpart do not apply to those aircraft when they are required to be operated under part 135. Section 91.501(b)(5)(2) provides an exception whereby aerial work operations such as aerial photography or survey may be conducted under Part 91 instead of Part 135 if common carriage is not involved.

a. Common Carriage

The first issue in determining the applicability of §91.501, therefore, is whether Sub D's operation involves common carriage. Advisory Circular 120-12A provides guidance to determine whether an operation constitutes private or common carriage. The Advisory Circular enumerates four elements in defining a common carrier: (1) a holding out of a willingness to (2) transport persons or property (3) from place to place (4) for compensation. Sub D's operation would fail to meet the first three elements if the photographer boards and disembarks either at the aircraft base or at the location of the photography if different from base, even when repositioning flights with stops limited to human and aircraft needs are made. *See Legal Interpretation to Bonilla (September 7, 2011) (stops for aircraft and human needs are permissible to maintain private carriage status).* Therefore, the operation should be considered private carriage.

Guidance is requested regarding whether the aerial photography flight would include the repositioning of the aircraft, and if so, whether the photographer must board and disembark at the aircraft base, whether it would include only the target area after the aircraft is repositioned, and if

so, whether the photographer must board and disembark at the target location, or whether either case might apply.

It is less clear, and guidance is also requested, regarding whether retrieving the photographer midway during the repositioning flight would change the analysis. This issue is addressed further below.

b. Aerial Photography or Survey

Based upon the common import of the term "aerial photography" Sub D's proposed operation appears to qualify for the 91.501(b)(2) exception. *See Legal Interpretation to Naekel (April 12, 1989); Bonilla.* Both cases applied § 119.1(e)(4)(iii), however, the analysis is equally applicable to § 91.501(b)(2).

Sub D's proposed operation appears to fall squarely within §91.501(b)(2) as noncommon carriage aerial photography flights. Furthermore, there appear to be no restrictions on Parent A's ability to provide full reimbursement or payment of Sub D's operating costs even if they are deemed to be in exchange for the flights Sub D conducts on Parent A's behalf.

Confirmation of this interpretation of the application of §91.501(b)(2) to the foregoing facts is nevertheless requested.

In the event, however, that Sub D's operation is deemed to involve common carriage an analysis of Part 119 may be required.

§ 119.1(e)(4)(iii)

14 CFR Subchapter G applies to Air Carriers and Operators for Compensation or Hire. Part 119 governs certification of commercial operators and air carriers. Part 135 governs the operations of On Demand operators pursuant to §119.1(a). Even assuming, therefore, that the operation would constitute common carriage, the next issue is whether the operation is excluded from the applicability of Parts 119 and 135 pursuant to the exception under §119.1(e)(4)(iii). That section provides that, so long as the operation does not involve airplanes having a passenger-seat configuration of 20 or more or a payload capacity of 6,000 pounds or more, Part 119 does not apply to aerial work operations including aerial photography or survey. Again, based upon the common import of the term "aerial photography or survey" Sub D's proposed operation appears to qualify for the exception. *See Naekel; Bonilla.*

Question: May the aircraft carry the photographer for only part of a repositioning flight if the photographer disembarks the aircraft at the same location on the return repositioning leg?

The question arises under both §§91.501(b)(2) and 119.1(e)(4)(iii) whether the retrieval of the photographer at any point during the repositioning flight other than departure from the initial base and return to base would cause a "dual purpose" of the flight, thereby removing the operation from exception under §119.1(e)(4)(iii). *See Legal Interpretation to Sapp (May 17, 2007); Legal Interpretation to Shaw (February 4, 2008); Naekel.*

Legal Interpretations have deemed aerial photography flights to qualify for the exception of §119.1(e)(4)(iii) even when passengers are on board the aircraft so long as they are necessary for the aerial photography or survey operation. *See Naekel (forestry personnel for forest and wildlife survey); Legal interpretation to Hickey (June 26, 1989)(law enforcement survey of illegal activity); Legal Interpretation to White (May 11, 1995)(photographer)(note that White was superceded regarding the applicable pilot certification); Sapp (news crew/photography crew).*

The Legal Interpretations prior to *Bonilla* have consistently held that flights under §119.1(e)(4)(iii) must depart and return to the same place. *See Sapp, Hicky, Legal Interpretation to Shamborska (February 5, 2010), Legal Interpretation to Cecil (Apr. 28, 1990), Naekel, Shaw.* Furthermore, it is clear that stops mid-flight to enable passengers to tour or collect samples is impermissible. See, e.g., *Hickey.* While it is impermissible to leave the photographer at the end of the survey, more recently, the FAA has recognized an exception when human and aircraft needs require stopping along the way to refuel, eat, and rest. *Bonilla.*

It is not clear under the foregoing interpretations, however, whether the essential passengers must board and disembark at the beginning and end of outbound and return repositioning flights, board and disembark at the target location upon repositioning, or whether they may board at a refueling stop if they disembark at the same location on the return repositioning flight.

Clarification of this issue is therefore requested.

Question: Would the outcome of the above questions be impacted if the pilots were required to divert to a different return airport due to emergency or current airport conditions?

Question: Are any special Letters of Authorization required as a result of the answers to the above questions?

Thank you for your time and consideration of the foregoing questions. Please do not hesitate to contact me should you require any further information or clarification of the proposed facts.

Respectfully,

Mona L. Bentz, Esq.