U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

JUL 25 2017

Robert Lancaster
[redacted]

Re: Electronic newsgathering operations under 14 C.F.R. § 119.1(e)

Dear Mr. Lancaster,

This letter is in response to your February 22, 2017 request for a legal interpretation of 14 C.F.R. § 119.1(e) regarding aerial work operations and – in particular – seeking confirmation of whether certain helicopter operations must comply with part 135. For your convenience, we have restated your questions below, followed by certain assumptions, and our interpretation of pertinent parts of the applicable regulation.

Facts and Assumptions.

The proposed aerial work is an electronic newsgathering operation (ENG) conducted by a pilot and photojournalist, both of whom you indicate work for the same company. It is not clear from your facts, whether the pilot and photojournalist are employed by the TV station to which they deliver the images, or an alternate entity. For purposes of this analysis we assume both are employed by another entity that is in turn hired by the TV station to conduct the ENG.

It is also not clear at which point the TV station acquires title or right of use to the property (videos or pictures) recorded on the ENG. For purposes hereof, we will assume the ENG occurs after the TV station hires you to conduct the flights, and that accordingly, the TV station becomes the rightful owner or user of the pictures or videos immediately after they are recorded.

You suggest that the operations are conducted from a site separate from the TV station since – at times – the TV station requests you to land at their facilities immediately after conducting the ENG and prior to returning to your point of departure. The purpose of the stop is for the photojournalist to disembark for long enough to deliver the images or videos to the TV station by downloading them from a portable recording media card to the TV station's electronic systems, prior to reboarding the helicopter and returning to the departure airport. Based on these facts, you ask us whether the operation constitutes a

part 135 operation since: (a) the only things left behind are the electronic images, (b) the photojournalist reboards the helicopter with the recording media card where the images were originally stored, and (c) the pilot and photojournalist return to the original point of departure.

Analysis.

As a general rule, flights involving the carriage of persons or property for compensation or hire must be conducted with a commercial operating certificate pursuant to part 119. Notwithstanding, § 119.1 establishes an exception to the rule which allows certain operations to be conducted outside of the operating framework established in part 119. Aerial work operations – including aerial photography and surveys – are some of the operations excepted from part 119 pursuant to the provisions of § 119.1(e)(iii). ENG is considered aerial photography and thus is subject to the § 119.1 exception.

The § 119.1 exception is not absolute, and the FAA imposes limits on its applicability. For instance, the FAA has consistently interpreted aerial work operations to mean operations that depart from a certain location and return to the same site without an intermediate stop. This means that the § 119.1 exception only applies when the aerial work operation involves nonstop flights departing and arriving from the same location.[1] The FAA has consistently concluded that interim stops when conducting aerial work operations generally transform such operations into "dual purpose" operations. It has asserted that the aerial work exception does not apply when "dual purpose" operations are conducted.[2] However, the FAA has also recognized an exception to the general rule whereby interim stops for aircraft or human needs would not disqualify the aerial work operations from the 119.1 exception. In these cases, the operators are prohibited from picking or dropping passengers or property, or from conducting work while the aircraft is on the ground.[3]

The FAA has previously discussed the meaning of the term "aerial photography." Since the term is not defined in the regulation, it has construed it to mean the condition where taking pictures or filming is done from the air.[4] Thus, it is reasonable to conclude that aerial photography work entails the departure from an airport, to take pictures from the air, prior to returning and landing at the point of departure.

An interim stop to download the pictures or video to the contracting TV station's electronic systems is not an integral part of an aerial photography operation. Such stop is

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[1] *See* Legal Interpretation to Angelina Shamborska, by Rebecca B. MacPherson, Assistant Chief Counsel Regulations Division (February 5, 2010); Legal Interpretation to Robb Cecil, by Donald P. Byrne, Acting Assistant Chief Counsel Regulations and Enforcement Division (April 28, 1990); Legal Interpretation to Gerald Naekel, by John H. Cassady, Assistant Chief Counsel (April 12, 1989).

[2] *See* Legal Interpretation to Ray Bonilla, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (September 7, 2011); Legal Interpretation to Bob Shaw, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (February 8, 2008).

[3] *See* Id., Legal Interpretation to Ray Bonilla, *supra*; Administrator v. Southeast Air, Inc., NTSB Order No. EA-1825 at at fn 8 (August 26, 1982), 1982 WL 44935 (N.T.S.B.); In the Matter of: Conquest Helicopters, Inc., FAA Order No. 95-25 (December 19, 1995), 1995 WL 853895.

[4] *See* Legal Interpretation to Joe M. Sapp, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (May 17, 2007).

not necessary to perform the intent of an aerial photography operation which is limited to capturing pictures or videos. The FAA has stated that "if the helicopter lands at a site other that its origin, the operation can no longer be considered solely aerial photography and, therefore, would not fall within the scope of the aerial photography or survey exception."[5] Thus, based on the facts and assumptions made herein, an intermediate stop to download data would change the nature of the operation from an aerial photography operation to a "dual purpose" operation which would require a certificate under part 119.

The analysis stated above could change if there is a variation in the facts included in your letter or the assumptions stemming therefrom.

We trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Francisco E. Castillo, General Attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of the Flight Standards Service.

Sincerely,

Lorelei Peter
Assistant Chief Counsel for Regulations, AGC-200

[5] Legal Interpretation to Gerald Naekel, by John H. Cassady, Assistant Chief Counsel (April 12, 1989).

Robert Lancaster

[redacted]

February 22, 2017

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800 Independence Ave., SW

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Dear Sirs:

I fly a news helicopter in ENG operations. From time to time, the TV station requests that I land at the station so my photojournalist (an employee of the same company as I am) can remove the removable recording media card to let the station download images he has recorded on that portable recording media card. The recording media card, while different from a thumb drive, is essentially the same technology, but larger in capacity. After downloading the images in the TV station's building, the exact same recording media card is returned to my helicopter by my photojournalist. We both return to our departure airport.

Because the exact same recording media card is brought back to my helicopter and nothing but downloaded electronic images are left behind (not cargo), does this operation constitute a Part 135 operation?

Thank you for your help and interpretation.

Sincerely,

Robert Lancaster

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