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

Office of the Chief Counsel

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

MAR 10 2011

Mr. Jeffrey Hill
Vice President Operations
Carson Helicopters
952 Blooming Glen Road,
Perkasie, PA 18944

Dear Mr. Hill:

This letter responds to your request of November 10, 2010 for confirmation that your current operation of a DHC-6-200 airplane in Peru qualifies as a part 91 operation. You state that Carson Helicopters uses its airplane to collect gravity and magnetic data under contracts with oil companies to produce a map and provide an interpretation. Carson Helicopters does not carry passengers or cargo for hire and uses Aeromaster Peru (Aeromaster) in country to arrange permits and liaison with government offices. You also state that Aeromaster does not operate or maintain your aircraft. In a follow up conversation with Carson Helicopters' Principal Maintenance Inspector on March 7, Carson Helicopters also indicated that the data-gathering equipment is installed on the airplane under a field approval, and a Carson Helicopters employee manipulates the equipment while conducting the data gathering activity.

You also question whether a previous Legal Interpretation to Marshall Filler from Rebecca MacPherson (August 5, 2009) would apply to your operation in Peru. The facts in your case are distinguishable because in the Filler interpretation, we addressed whether the transportation of cargo under part 133 in an external load operation could be considered common carrier operations. In this case, we conclude that the data-gathering equipment is not property transported from place to place. Because the equipment is attached to the aircraft and approved under a field approval,[1] it is considered to be a fixture, instead of property or cargo of another that is transported from place to place.[2] Therefore, it is similar to the cameras mounted on an aircraft under an approved supplemental type certificate. *See for example*, electronic news gathering (ENG) cameras discussed in Legal Interpretation to

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[1] As described in FAA Order 8900.1, Volume 4, Chapter 9, Sec.1, the FAA uses the field approval process to approve technical data for making a major repair or major alteration for use on only one aircraft. An authorized Aviation Safety Inspector (ASI) may approve the data, which then becomes "technical data approved by the Administrator" pursuant to 14 CFR 21.95, "Approval of minor changes in type design."

[2] An essential element of a "common carriage" operation is the transportation of persons or cargo. *See* 14 C.F.R. §110.2, "operations not involving common carriage" means operations "not involving the transportation of persons or cargo." Based on this criteria and the facts presented in your letter, we also conclude that your operations do not involve carriage of property of another and would be excluded from the common carriage provisions of §129.14.

Sergeant Dale Owens from Rebecca MacPherson, 2010 WL 28889044 (D.O.T.) dated March 25, 2010.

Part 119 applies to each person operating or intending to operate a civil aircraft as an air carrier or commercial operator, or both, in air commerce. Certain operations involving the use of an aircraft for compensation or hire, such as aerial work operations, including aerial survey, are excluded from the certification requirements of part 119. (*See* §119.1(e)(4)(iii)). Such operations are permitted within the United States under the less stringent operating rules of part 91.

The FAA has consistently interpreted the term "aerial work" to mean work "done from the air." Additionally, the aerial work provision of §119.1(e)(4)(iii) is inapplicable if property "of another" is carried on the aircraft; the operation does not begin and end at the same location; or if passengers who are not essential to the operation are carried on board the airplane. *See* Legal Interpretation to Jeff Lieber, 2011 WL 281680 (D.O.T) (and cases cite therein); Legal Interpretation to Angelina Shamborska, 2010 WL 582040 (D.O.T); and Legal Interpretation to Bob Shaw from Rebecca MacPherson, 2008 WL 336386 (D.O.T.) (construing the aerial work provision in the context of §91.319(a)(2)). Although we conclude (based on only the facts stated in your letter) that your operation does not include the carriage of property, we do not have sufficient information to determine whether these operations would qualify as an aerial work operation. However, for the purpose of this discussion, we assume that the aerial work exclusion of §119.1(e)(4)(iii) is applicable, and your data gathering activities may be conducted under part 91 within the United States.

With some exceptions, the operational rules of part 91 generally apply to aircraft operated only within the United States and within 12 nautical miles from the coast of the United States (*see* §91.1). Section 91.703(a)(2) requires persons operating U.S.-registered aircraft within a foreign country to comply with the regulations relating to the flight and maneuver of aircraft within the foreign country. Except for certain provisions not relevant to this discussion, §91.703(a)(3) also requires such persons to comply with part 91 "to the extent it is not inconsistent with the applicable regulations of the foreign country" where the aircraft is operated. The FAA has interpreted this provision to require compliance with part 91, if such compliance would not violate the applicable regulations of the foreign country. Therefore, if a foreign civil aviation authority (CAA) requires an operating certificate to conduct those operations within its jurisdiction, you would not be able to operate under part 91.

The FAA does not provide interpretations of the aviation rules of foreign countries; therefore, the focus of this response is the application of the aerial work exception in the United States. We recommend that you contact the appropriate official in the civil aviation authority of Peru for guidance on the operational rules applicable to your activities in Peru.

This interpretation was prepared by Lorna John, Senior Attorney, in the Regulations Division of the Office of the Chief Counsel and was coordinated with the General Aviation and Commercial Division (AFS-800) and the Aircraft Maintenance Division (AFS-300). If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200