March 25, 1997

David Grau, Esq.
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Dear Mr. Grau:

This is in reply to your letter of March 17, 1997, to Ms. Lori Brand, FAA Flight Standards District Office, Hillsboro, Oregon. You ask for an opinion regarding certain operations proposed by your client, Air Surveillance Corporation (ACS), an Oregon Company. Based on the information which you have provided, we are of the opinion that pilots conducting aerial surveillance duties for ACS must possess at least a commercial pilot certificate.

You indicate that ACS proposes to offer a unique civilian aerial surveillance and security service, using light, general aviation aircraft, and ground vehicles equipped with radios, night vision devices, and other high-tech electronic systems. The company would provide crime prevention services in rural areas. Apparently, aviation operations would only be conducted under Visual Flight Rules (VFR) and would be in compliance with the minimum safe altitude requirements of FAR 91.119.

FAR 61.118 states, in part, that a private pilot may not act as a pilot-in-command of an aircraft for compensation or hire except that 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.

The proposed business of ASC is surveillance, including aerial surveillance. In our opinion, flight operations would be conducted as an integral part of the commercial endeavor of the company and would not be merely incidental to that business. Therefore, persons who receive compensation for acting as pilot-in-command of ACS flights must possess at least a commercial pilot certificate.

Additionally, the FAA has previously determined that the receipt of flight time to build flying hours is considered compensatory in nature and would require that the recipient hold a commercial pilot certificate.

We hope that this opinion satisfactorily responds to your inquiry. Please contact us if we can provide any additional information.

Sincerely,

John J. Callahan
Deputy Regional Counsel