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

Office of the Chief Counsel

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

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Angelina Shamborska
[redacted]

Dear Ms. Shamborska:

This letter is in response to your September 23, 2009, request for a legal interpretation. In your letter you stated that you have been invited to bid on a contract where you would provide pilots and aircraft for a radio network traffic reporting team. You asked two questions. Your first question was whether this type of operation could be flown under Part 91 the Federal Aviation Regulations or whether a Part 135 certificate is required. Second, you asked if 100 hour inspections would be required if the operations were conducted under Part 91. The operating rules that would be applicable to you depend on the primary purpose of your operation, namely whether the operation may be classified as an aerial works operation under Title 14 of the Code of Federal Regulations (CFR), § 119.1(e)(4)(iii).

Title 14 of the Code of Federal Regulations (14 CFR) Part 119 prescribes rules for persons operating or intending to operate civil aircraft as an air carrier or commercial operator. With some exceptions, Part 119 requires that any operation of an aircraft carrying passengers or cargo for compensation or hire must be authorized by an air carrier or operating certificate and must be conducted in accordance with the appropriate operating rules.

Section 1.1 of the Federal Aviation Regulations defines a commercial operator as a person who, for compensation or hire, engages in the carriage by aircraft in air commerce of persons or property. Generally, operations involving the carriage of persons or property for compensation or hire, i.e., commercial operations, must be conducted under the operating rules of Part 121 or 135, depending on the size of the aircraft. However, Part 119 contains certain exceptions to that requirement. Specifically, §119.1(e)(4)(iii) contains an exception for flight operations involving aerial photography or survey. While the regulation cites certain examples of aerial work operations, those examples are not all-inclusive. The FAA has interpreted the term "aerial survey" consistent with its common usage to connote a condition where something is examined or reviewed from the air. *See* Legal Interpretation, Letter to Mr. Gerald Naekel from John H. Cassidy, Assistant Chief Counsel for Regulations (April 12, 1989). Examples of aerial work operations include flights that have the same departure and destination points. *See* Legal Interpretation, Letter to Bob Shaw from Rebecca MacPherson, Assistant Chief Counsel for Regulations (Feb. 4, 2008); Letter to Joe Sapp from Rebecca MacPherson, Assistant Chief Counsel for Regulations (May 17, 2007).

In the Sapp interpretation the FAA addressed an issue similar to yours in which it determined that helicopter operations conducted for the purpose of electronic news gathering could be conducted under Part 91 of the regulations. The FAA concluded that those operations fell within the exception for aerial work operations, i.e., aerial photography, contained in §119.1(e)(4)(iii) of the regulations. *See* Sapp Interpretation (May 17, 2007). Although your letter does not detail the specific types of traffic reporting activities that would be conducted during flight, aerial photography and survey for the purpose of traffic reporting would appear to fall within the ambit of the exception. In this instance you would be relieved of the requirement to obtain a certificate authorizing operations under part 135. These operations may be conducted under Part 91.

Please note however that the FAA has consistently interpreted aerial works operations to mean operations that have the same departure and destination points. The Agency has determined that if an aircraft lands at a location other than its point of origin, the aerial works exception does not apply. This would be due to the fact that the operation has taken on a dual purpose of both surveying and transporting passengers from one point to another for compensation or hire. *See* Shaw Interpretation (2008); Naekel Interpretation (1989). In this scenario, the rules of Part 135 would apply and the operation would require an air carrier operating certificate. Provided your operation does not take on a dual purpose, it may be conducted under Part 91.

As to your question regarding inspection of the aircraft, the answer is yes, the aircraft must undergo 100 hour inspections. Section 91.409(b) of the regulations states in part that no person may operate an aircraft carrying any person (other than a crewmember) for hire unless within the preceding 100 hours of time in service the aircraft has received an annual or 100-hour inspection and been approved for return to service in accordance with part 43 or has received an inspection for the issuance of an airworthiness certificate in accordance with part 21.

This response was prepared by Angela Washington, an attorney in the Regulations Division of the Office of the Chief Counsel and coordinated with the Flight Standards Service. We hope this response has been helpful. 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 Regulations Division, AGC-200