DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

WASHINGTON, D.C. 20591

8 SEP 1977

Ms. Tucker Comstock
[redacted]

Dear Ms. Comstock:

This is in response to your letter of June 8, 1977, in which you ask for clarification of the privileges of a private pilot with a free balloon rating.

You describe the circumstances that have given rise to your inquiry as follows:

> It is traditional in balloon gatherings for the organizer or sponsor of an event to provide certain incentives to encourage participation in these events. The incentives are usually free propane, free lodging, and some or all meals for the pilot and a few crew persons (balloons require only one pilot, but about 4 to 6 launch and chase crew). In some instances, the organizer will also pay for the Sanctioned Task Score Sheet, a $25 entry fee for Balloon Federation of America sanctioned competition.

You also point out that "The remuneration, if it can be called such, rarely covers all the expenses incurred by the event participant; it does, however, allow the pilot/owner to cover some of his expenses."

As you know, to act as pilot in command of an aircraft for compensation or hire, a pilot must have at least a commercial pilot certificate. Section 61.118 of the Federal Aviation Regulations (14 CFR 61.118) prohibits a private pilot from acting as pilot in command of an aircraft that is carrying passengers or property for compensation or hire and from acting for compensation or hire as pilot in command of an aircraft. None of the exceptions in section 61.118 (incidental business activity, expense sharing, aircraft sales, and charitable airlifts) appear to apply to the circumstances you describe. Accordingly, whether a private pilot would be in violation of section 61.118 by receiving any of the "incentives" you describe would depend on whether they constitute compensation.

Our comments on whether the specific incentives you list are compensation within the meaning of section 61.118 are as follows:

> 1) The organizer pays the sanction fee: In this instance the pilot WOULD have to fly in order for the fee to be paid, as the registration fee is only applicable to register results of competition.

The payment of this $25.00 fee for the pilot, which is conditioned upon operating the balloon at the gathering, would be compensation.

> 2) The organizer pays for propane: this is a very small part of the cost of operating a hot air balloon. Many races and rallies provide the propane at no charge mainly for convenience: it is difficult to obtain propane because retail outlets are not open on weekends, when most balloon events are held, and non-retail operations have no way of computing charges, since there is no flow gauge on propane bulk tanks.

In spite of the small cost involved, propane provided by the organizer would be compensation to the pilot. However, if a small, one-time charge were paid by each participant to cover total cost of propane used at the gathering, the FAA would not consider a pilot who uses up more than his or her "share" of the propane to be receiving compensation.

3) The organizer provides housing and/or food for pilots and crew. The housing and food are not a conditional item; if the pilot does not fly, these are in any event provided.

In view of the fact that housing and food are not conditioned upon the pilot operating the balloon, these items would not be considered to be compensation.

4) The organizer requires that banners be affixed to the basket of the balloon in order to compete. The banner may well have the name of a sponsor, or the name of the race organizer, or the name of the event. For example, the banner may say

a) Porter Paint Company
b) World Balloon Championships, Inc.
c) U.S. National Hot Air Balloon Championships

Some of these may in addition have the competition number assigned to the balloon included on the sign. These signs are approximately 3 by 3 feet.

Whether the pilot is receiving compensation for participation in the race is determined by what, if anything, he receives, not by what he is requested to do in order to participate in the race. Moreover, even if another person, eg. a paint company, were to pay the organizer to require an advertising banner on each balloon, the display of the banner would not be considered to be carrying property for compensation or hire within the meaning of § 61.118.

5) The pilot is required to carry a member of the press, organizer's committee, or one of the sponsors for the event. None of these people have paid for a balloon ride, except the sponsor, who may have donated resources in order for the balloon event to take place. The pilot does not receive any additional compensation for taking the passenger above and beyond what is given to all other participants.

Under the circumstances you describe, the fact that the pilot is required to carry persons or property in the balloon is not significant in determining whether the "incentives" you describe are compensation. Furthermore, since the persons receiving the ride do not pay the organizer any charge, the pilot is not operating an aircraft that is carrying passengers for compensation or hire.

6) Prize money is awarded on the basis of competitive finish.

Prize money awarded on the basis of competiton is not compensation.

7) Mileage money is paid at a rate less than allowed by the IRS.

Any mileage paid to participants would be compensation.

We trust that we have satisfactorily responded to your questions. In an effort to ensure uniform application of section 61.118, the legal opinions expressed in this letter will be disseminated among FAA enforcement personnel.

Sincerely,

NEIL R. EISNER
Acting Assistant Chief Counsel
Regulations and Enforcement Division
Office of the Chief Counsel