August 5, 1992

John W. Cox
Northwest Aviation
Enterprises P.O. Box 2407
Lake Oswego, OR 97035-0093

Dear Mr. Cox:

This responds to your letter dated June 30, 1992, to Inspector Steven Albert of the Portland-Hillsboro Flight Standards District Office, in which you described several scenarios involving balloon operations. You asked if the operations by the referenced certificate holders would be allowed under the "compensation or hire" provisions of Part 61 of the Federal Aviation Regulations (FAR).

We address each of the scenarios in your letter in the order you raised them. You referred to "Commercial Ballooning Services" (your capitalization) several times in your letter; we assumed that none of the referenced persons publicize using that type of reference. Also, please note that we are not expressing a finding that the referenced individuals have operated in the manner you described.

Bookkeeping services

We interpreted your reference to Mr. Turel's activities as follows: Mr. Turel holds a Private Pilot Certificate; he offers the operation of his balloon to the public for no payment; his balloon is affixed with the logo for his business, "Columbia Bookkeeping Services"; during the time that he operates his balloon, it does not carry any other advertising (or passengers or property); and Mr. Turel requires the permission of those who solicit the operation of his balloon, to operate his balloon in the manner and at the location in which he operates (i.e., without their permission, he would be a trespasser). In addition, we assumed by your reference to Mr. Turel's advise on the tax code, that his profession is that of bookkeeper.

Section 61.118 of the FAR would apply here. The relevant provisions read:

> Except as provided in paragraph[] a...of this section, a private pilot may not act as pilot in command [PIC] of an aircraft that is carrying passengers or property for compensation or hire; nor may he, for compensation or hire, act as

pilot in command of an aircraft.

> (a) 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.

Therefore, in answering your inquiry, the first issue is whether Mr. Turel's operation of the balloon would be for compensation or hire. We would conclude that he would be receiving compensation, because he would be afforded the opportunity to advertise at the permitted location and at the permitted time, to the audience gathered or attracted by those who solicit his balloon, and he would not be legally entitled to do so without the solicitors' permission.

The next issue would be whether Mr. Turel's operation would fall within the exception stated in sub-section (a) of § 61.118. Under the circumstances you described, we would be of the opinion that Mr. Turel would not be in violation of FAR § 61.118. Because Mr. Turel would be advertising his own business and because his pilot operations are secondary to his professional role as bookkeeper, his flights would be incidental to his business and employment.

Student pilot

With respect to Ms. Frame's operation of Mr. Turel's balloon, you stated that she holds a Student Pilot Certificate, that she uses the time she operates his balloon to pursue her Private and Commercial Certificates, that he allows her the use of the balloon at no cost, and that he instructs her to operate the balloon in high visibility areas for the purpose of advertising "Columbia Bookkeeping Services."

Section 61.89 of the FAR would apply here. The relevant provisions read:

> **(a)** A student pilot may not act as pilot in command of an aircraft...
> (3) For compensation or hire.
> (4) In furtherance of a business.

Given what you described, we would be of the opinion that this operation would be in violation of sub-section (a)(3) of FAR § 61.89. The FAA has historically taken the position that building-up flight time is a form of receiving compensation when the pilot does not have to pay the cost, or pays a reduced cost,

of operation. We would also be of the opinion that Ms. Frame's operation would violate sub-section (a)(4), in that the advertising function of her operation furthers Mr. Turel's business.

Balloon corporation

We interpreted your references to P & R Balloons as follows: Mr. Russo holds a Private Pilot Certificate; when he operates a P & R balloon with the Buckmaster Coffee banner attached, P & R balloon is compensated; Mr. Russo and Mr. Zuments operate P & R Balloons as a commercial company, including selling balloons; and Mr. Russo does not pay himself compensation.

Under the circumstances you described, we would be of the opinion that Mr. Russo would be in violation of § 61.118. The exception cited in sub-section (a) of § 61.118 is for a private pilot to act as PIC in connection with a business where the flight is only incidental to that business. Because P & R Balloon is not in the coffee business, its operation of the coffee company banner flights would not be incidental to that business. Furthermore, because the compensation goes to P & R Balloon, and Mr. Russo is a proprietor of that company, we would be of the opinion that he is acting as PIC for compensation or hire.

Because they hold Commercial Pilot Certificates, Mr. Zuments' and Mr. Hull's current operations would not violate Part 61.

Gas company

We interpreted your references to Northwest Natural Gas as follows: Northwest Natural Gas functions as a public utility, the sole function of which is for other than aviation purposes; Northwest has organized a "flight department" using employees who hold Private Pilot Certificates; the pilots serve as full-time, salaried marketing personnel; the pilots are not required to hold pilot certificates as a condition of their jobs and do not fly as a primary duty of their employment; the pilots receive no monetary compensation for flying; the pilots do receive compensatory time for flying; and the pilots operate balloons with Northwest Natural Gas' logo affixed, for the purpose of company promotion.

Under the circumstances you described, we would be of the opinion that the pilots' operation would not be in violation of § 61.118 of the FAR. Because the gas company's advertising would be incidental to a non-aviation business, and because the pilots' operation of the balloons would not be a primary condition for their employment (but, merely, a secondary duty), the exception in § 61.118(a) would apply.

Adventures corporation

We interpreted your references to Vista Balloon Adventures, Inc., as follows: Mr. Locatell is an owner and proprietor of Vista Balloon Adventures; he holds a Private Pilot Certificate; Vista Balloon Adventures operates balloons carrying passengers for compensation or hire; Mr. Locatell does not conduct the passenger-carrying operations, but he does conduct balloon operations in the Vista balloon; and his operations promote Vista Balloon Adventures, because the balloon is affixed with the Vista Balloon Adventures banner. We assumed that your reference to Mr. Locatell's operation of the Vista balloon at the Taste of Beaverton 1992 meant that Mr. Locatell was granted permission to operate and advertise there by the event organizers; therefore, we assumed that his operations are for compensation, for the reason stated above with respect to Mr. Turel's operations.

As described above with respect to Mr. Turel and the Northwest Natural Gas flight department, the exception in § 61.118(a) applies where a private pilot is conducting operations to advertise the pilot's company and the pilot's primary duties with the company do not involve operating aircraft. We assume that Mr. Locatell serves as a manager of Vista Balloon Adventures as his primary function, and that he flies the balloon only sparingly. Based on that assumption, we would be of the opinion that his operation would not be in violation of § 61.118.

[I] Note that we did not express an opinion as to the other P & R Balloons operations you described. We are unsure of what you meant by "for pay" tethers and "for pay" free flights.

Your ballooning community's belief

Let me reiterate the FAA's position regarding a private pilot's accumulation of flight time. If that pilot accumulates flight time, the FAA considers free or reduced cost provision of the aircraft to be compensation, and the pilot is, thus, acting as PIC for compensation. This applies to all aircraft operations, including glider towing and lighter-than-air and hot-air balloon operations. Therefore, those operations would be prohibited unless they fall within the exception in FAR § 61.118(a).

Balloon rallies and competitions

You cited prize money, motel costs, meal costs, propane costs, travel costs, and present memorabilia as items that may be given to private pilots at balloon rallies and competitions. In general, the FAA would consider operations involving the giving of those items to be operations for compensation.

However, there would be two exceptions to the general rule. If an item is something the pilot effectively buys with their entrance fee, or if the item is something that is given to all individuals regardless of whether they are a pilot or not, the FAA would not consider the subsequent operation to be a for compensation.

The "present memorabilia" to which you referred might provide examples of both. We would assume that most memorabilia would be of nominal value, e.g., an emblazoned t-shirt or coffee mug, the cost of which would be covered by the entrance fee. Effectively, the pilot would buy the memorabilia with the entrance fee; therefore, the pilot is not being compensated. To the extent that any of the other items are bought by the pilots' entrance fees, the pilots would not be considered to be receiving compensation. Furthermore, if an item were to be given to all who are at the event---pilots, spectators, members of the general public, etc.--- the FAA would not consider any subsequent operation to be for compensation, because the pilot could receive the item without operating the aircraft.

We would define prize money as something other than "appearance" money. We assume that, in the usual context, prize money is only paid to those pilots who win the competition, and that the prize money pool bears some relation to the amount of the entrance fees. The pilot pays the entrance fee and, in exchange, is made whole by

the opportunity to compete; the competition organizers need not give the pilot anything more to satisfy the pilot's expectations. A pilot does not expect to receive a return of prize money on the "investment" of the entrance fee, but merely hopes to receive prize money based on flying skill. [2]

Therefore, this situation is akin to the pilot buying an item, and the FAA would not consider that type of competitive flying for prize money as operating for compensation. Note that the establishment of a large prize money pool, where the pool is noticeably larger than the total of the entrance fees, could be construed differently. In that case, each pilot would be receiving more than what their entrance fee is worth, an opportunity to win a relatively high prize as compared to their "investment"; the FAA would consider that type of flying for prize money as operating for compensation.

Sincerely,

CAREY. TERASAKI
General Attorney

[2] In this context, it is irrelevant to what degree the pilot's confidence in their competitive flying ability instills confidence that they will win. Ultimately, the pilot will receive prize money only if they perform at a certain level.