1997 WL 34613525 (D.O.T.)

Department of Transportation (D.O.T.)
Federal Aviation Administration

*1 Legal Interpretation

Interpretation 1997-23

October 23, 1997

John W. **Harrington**

Thank you for your letter dated July 16, 1997, to the Office of the Chief Counsel, Federal Aviation Administration (FAA), on behalf of the Confederate Air Force (CAF), requesting an interpretation of what is considered compensation under section 61.113 of the Federal Aviation Regulations (14 CFR 61.113, formerly 14 CFR 61.118). You also request an opinion regarding the necessary medical certification for pilots conducting operations for the CAF at airshows and other aviation events.

In your letter you state the following: the CAF owns, maintains, and operates a number of aircraft throughout the Country and members of the CAF volunteer to fly these aircraft, without compensation, to various CAF and other aviation events. The CAF aircraft flown to these aviation events are used as static displays or used to perform fly-by activities before those in attendance at the event. During the course of the airshow or aviation event, these CAF pilot volunteers may receive lodging, use of cars for local transportation, meals, or other minor amenities (e.g. hats, T-shirts, programs, etc.); nothing more than other CAF volunteers who are not flying CAF aircraft. You ask whether the above is considered compensation under section 61.113, and whether the above flying activities are permissible if the CAF volunteer holds either a private pilot certificate and a third-class medical certificate or a commercial pilot certificate, or airline transport pilot certificate, and a third-class medical certificate. The answers to these questions are discussed below.

Section 61.113 sets forth the privileges and limitations of the holder of a private pilot certificate. That section states, in pertinent part, that a person who holds a private pilot certificate may not act as pilot in command of an aircraft that is carrying passengers or property for compensation or hire; nor may that person, for compensation or hire, act as pilot in command of an aircraft. Section 61.113 does provide for exceptions to the above (incidental business activity, expense sharing, charitable airlifts, search and location missions, glider towing); however, none of the exceptions are applicable based on the facts presented in your letter.

Section 61.133 (14 CFR 61.133) sets forth the privileges and limitations of the holder of a commercial pilot certificate. That section states, in pertinent part, that a person who holds a commercial pilot certificate and who is qualified in accordance with this part and with the applicable parts of this chapter that apply to the operation, may act as pilot in command of an aircraft carrying persons or property for compensation or hire; and that person may, for compensation or hire, act as pilot in command of an aircraft.

Section 61.23 (14 CFR 61.23) sets forth the medical certificate requirements (first-class, second-class, third-class, or no medical certificate) when conducting various pilot operations. That section states, in pertinent part, that a person

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must hold at least a second-class medical certificate when exercising the privileges of a commercial pilot certificate and at least a third-class medical certificate when exercising the privileges of a private pilot certificate.

*2 In order for a person to act as pilot in command of an aircraft for compensation or hire, a pilot must have at least a commercial pilot certificate and a second-class medical certificate. If no compensation or hire is involved, then a person may act as pilot in command of an aircraft with a private pilot certificate and a third-class medical certificate.

In determining what is considered compensation, it has been the FAA's long-standing policy to define compensation in very broad terms. For example, any reimbursement of expenses (fuel, oil, transportation, lodging, meals, etc.), if conditioned upon the pilot operating the aircraft, would constitute compensation. In addition, the building up of flight time may be compensatory in nature if the pilot does not have to pay the costs of operating the aircraft. While it could be argued that the accumulation of flight time is not always of value to the pilot involved, the FAA does not consider it appropriate to enter into a case-by-case analysis to determine whether the logging of time is of value to a particular pilot, or what the pilot's motives or intentions are on each flight.

Based on the facts provided in your letter, there are several areas where the CAF volunteers may be receiving compensation. First, you state that the CAF owns, maintains, and operates a number of aircraft throughout the country and that members of CAF fly these aircraft to various CAF and other aviation events. You state that these pilots receive no compensation, however, you do not state whether these pilots pay the operating cost to ferry the aircraft from where they are based to the various CAF and other aviation events. If these pilots are not paying the costs of operating the aircraft while ferrying the aircraft then the building up of flight time would be considered compensation. To avoid compensation, these pilots could either not log the flight time or they could log the flight time while bearing the full cost, including fuel and oil, for ferrying the aircraft.

Second, you state that during the course of the airshow or aviation event, CAF volunteers may receive lodging, use of cars for local transportation, meals, or other minor amenities. The determining factor in whether these items would be considered compensation is whether they are conditioned upon the CAF volunteer ferrying the CAF aircraft to the airshow or aviation event, or operating the CAF aircraft at the airshow or aviation event. In other words if the CAF volunteers did not ferry CAF aircraft to the event, or operate the CAF aircraft at the event, would the CAF still provide these volunteers with lodging, transportation, meals, etc. If the CAF would provide the above amenities to these CAF volunteers even if they did not ferry or operate the CAF aircraft, then the amenities would not be considered compensation. If, however, the above amenities are conditioned upon the CAF volunteers ferrying or operating the CAF aircraft at the airshow or aviation event then the amenities would be considered compensation.

*3 With respect to the necessary medical certification for pilots operating the CAF aircraft at airshows and other aviation events, the determining factor is what privileges the pilot will be exercising. If the pilot is exercising commercial pilot privileges (e.g. receiving compensation), then the pilot must hold at least a commercial pilot certificate and a second-class medical certificate. If the pilot is exercising private pilot privileges (e.g. not receiving compensation), then the pilot must hold at least a private pilot certificate and a third-class medical certificate. As stated earlier, section 61.23 explains the necessary medical certification requirements for various pilot operations.

I trust that the foregoing satisfactorily responds to your questions. This opinion has been coordinated with Flight Standards.

Donald Byrne
Assistant Chief Counsel

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