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

Office of the Chief Counsel

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

JUL 27 2009

Larry Seiler
[redacted]

Dear Mr. Seiler:

This is in response to your request for a legal interpretation dated March 18, 2009. In your letter you requested clarification on whether the two balloon with an airborne heater flights required by 14 C.F.R. § 61.109(h)(2)(i) must be performed with an authorized instructor.

Section 61.109(h) prescribes the aeronautical experience required for a private pilot certificate with lighter-than-air category and balloon class rating. Section 61.109(h) requires logging "at least 10 hours of flight training that includes at least six training flights with an authorized instructor in the areas of operation listed in § 61.107(b)(8)" that includes specific training based on the type of balloon in which training is conducted. Section 61.109(h)(1) prescribes, in relevant part, the flight training requirements for a gas balloon:

> [A]t least two flights of 2 hours each that consists of –
> (i) At least one **training flight with an authorized instructor within 60 days prior to application** for the rating on the areas of operation for a gas balloon;
> (ii) At least one flight performing the duties of pilot in command in a gas balloon with an authorized instructor; and
> (iii) At least one flight involving a controlled ascent to 3,000 feet above the launch site.

[Emphasis added.] Section 61.109(h)(2) prescribes, in relevant part, the flight training requirements for a balloon with an airborne heater:

> [A]t least –
> (i) Two **flights** of 1 hour each **within 60 days prior to application** for the rating on the areas of operation appropriate to a balloon with an airborne heater;
> (ii) One solo flight in a balloon with an airborne heater; and
> (iii) At least one flight involving a controlled ascent to 2,000 feet above the launch site.

[Emphasis added.] Section 61.39(a)(6)(i) prescribes the prerequisites for practical tests and states, in relevant part, that to be eligible for a practical test for a certificate or rating, an applicant must have an endorsement that the applicant has received and logged training time within 60 days preceding the date of application in preparation for the practical test.

You correctly observe that section 61.109(h)(1)(i) uses the term "training flight," but section 61.109(h)(2)(i) uses the term "flights." Your letter then asks whether the use of "flights" instead of "training flights" in section 61.109(h)(2)(i) was unintentional or whether the FAA intended that the two flights could be conducted as solo flights.

The proposed language for what became section 61.109(h)(2)(i) was:

> Two training flights of one hour each that covers the approved areas of operation appropriate to a balloon with an airborne heater within 60 days prior to application for the rating; . . . .

60 FR 41160, 41249 (Aug. 11, 1995). The word "training" was omitted from the final rule without discussion. *See* 62 FR 16220 (Apr. 4, 1997) (A requirement for a supervised PIC flight also was deleted from the final rule language without discussion, and solo flight and controlled ascent flight requirements were added to the final rule without discussion.) Reading the section 61.109(h)(2)(i) requirements in conjunction with the introductory text of section 61.109(h), specifically the phrase "must log at least 10 hours of flight training . . . that includes," could lead to a conclusion that section 61.109(h)(2)(i) assumes a training flight with an authorized instructor. Flight training is defined in section 61.1(b)(6) as "training, other than ground training, received from an authorized instructor in an aircraft." However, the inclusion of a solo flight requirement in section 61.109(h)(2)(ii) makes such a conclusion less certain because a solo flight cannot be a training flight with an authorized instructor. Admittedly, the regulation as drafted is unclear as to whether the two flights required by section 61.109(h)(2)(i) must be conducted with an authorized instructor. The FAA will consider a future rulemaking to clarify the requirements of this section.

Nevertheless, when this requirement is read in the context of the remainder of section 61.109 and of section 61.39(a)(6)(i), the intended requirement is that the two flights be conducted with an authorized instructor as training flights. The inclusion of the phrase "within 60 days prior to application" invokes the endorsement requirement of section 61.39(a)(6)(i), and that requirement applies to flight training received from an authorized instructor. Additionally, treating these two flights as training flights does not increase the applicant's burden because these flights, and their respective flight times, count toward the six training flights and 10 hours of flight training required by section 61.109(h).

This response was prepared by Robert Hawks, an Attorney in the Regulations Division of the Office of Chief Counsel, and coordinated with the Certification and General Aviation Operations Branch of Flight Standards Service. We hope this response has been helpful to you. 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 for Regulations, AGC-200