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

Office of the Chief Counsel

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

FEB 16 2010

Roger H. Benninger
[redacted]

Dear Mr. Benninger:

This responds to your request for a legal interpretation dated October 9, 2009. Your letter requests clarification concerning what constitutes a fraudulent or intentionally false entry in a logbook or record under 14 C.F.R. § 61.59(a)(2). Your letter presents three examples of a record containing inaccurate information for which you ask whether the inaccurate information represents a violation of the regulation. Additional information disclosed in a follow-up phone conversation suggests that some of the inaccurate entries were made by someone other than the airman certificate holder.

Section 61.59(a)(2) states, in relevant part, that no person may make or cause to be made any fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used to show compliance with any requirement for the issuance or exercise of the privileges of any certificate, rating, or authorization.

There are two potential violations under § 61.59(a)(2): fraudulent entry and intentionally false entry. Courts have defined the elements of fraud as: "(1) a false representation (2) in reference to a material fact (3) made with knowledge of its falsity (4) and with the intent to deceive (5) with action taken in reliance upon the representation." *Hart v. McLucas*, 535 F.2d 516, 519 (9th Cir. 1976). Courts also have held the elements of an intentionally false entry are the first three elements of a fraudulent entry. *Id.* For entries made by someone other than the certificate holder, the FAA would consider the complicity of the certificate holder with the person making the entry. Because the question of whether an entry is fraudulent or intentionally false depends on the facts at the time the entry was made, the FAA would investigate and consider the totality of the circumstances prior to pursuing an enforcement action. The limited facts presented in your examples do not allow a determination of whether the FAA would pursue an enforcement action. For that reason, the details of the examples are not recited in this interpretation.

Although the FAA is not in a position to determine whether the inaccurate entries presented in your examples were fraudulent or intentionally false, a certificate holder should take action to correct an inaccurate record when the inaccuracy becomes apparent.

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