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

Office of the Chief Counsel

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

NOV - 3 2010

Soaring Society of America
Attn.: Phillip C. Umphres, Chairman
P.O. Box 2100
Hobbs, NM 88241-2100

Dear Mr. Umphres:

This responds to your request for legal interpretation dated March 19, 2009, requesting clarification concerning the application of 14 C.F.R. §§ 61.69 and 61.113(g). Although your letter presents four scenarios, the underlying question in each is whether a private pilot may receive compensation in any form when acting as pilot in command (PIC) of an aircraft towing a glider or unpowered ultralight vehicle. This response answers that question.

Section 61.69(a) states, in relevant part, no person may act as PIC for towing a glider or unpowered ultralight vehicle unless that person holds a private, commercial, or airline transport pilot certificate with a category rating for powered aircraft and meets other aeronautical experience requirements. Section 61.113(a) states, subject to explicit exceptions, no person who holds a private pilot certificate may act as PIC of an aircraft that is carrying passengers or property for compensation or hire, nor may that person for compensation or hire, act as PIC of an aircraft. One of those exceptions provided in § 61.113(g) allows a private pilot who meets the requirements of § 61.69 to act as PIC of an aircraft towing a glider or unpowered ultralight vehicle.

Your letter accurately presents the history of the FAA's position regarding compensation for tow pilots. We briefly restate that history because it is relevant to what is permitted under the current rules.

On October 30, 1990, the FAA issued a legal interpretation of 14 C.F.R. § 61.118, which is similar to current § 61.113 except that it provided no exception for private pilots towing a glider or unpowered ultralight vehicle. Legal Interpretation to Judy Lincoln (Oct. 30, 1990). The Lincoln Interpretation first stated that the glider and its occupants were not property or passengers for the purposes of § 61.118. *Id.* That interpretation, however, stated that compensation in any form, including logging PIC flight time, was impermissible because of the prohibition in § 61.118 of acting as PIC for compensation or hire. *Id.*; *see also* Legal Interpretation to John W. Harrington (Oct. 23, 1997) ("[I]t has been the FAA's long-standing policy to define compensation in very broad terms" including any reimbursement of expenses and "the building up of flight time . . . if the pilot does not have to pay the costs of operating the aircraft."). The rules did permit a private pilot to act as PIC of an aircraft

towing a glider provided no compensation (including the logging of flight time) was received.

In 1997, the FAA redesignated § 61.118 to § 61.113 and amended it to allow a private pilot who meets the requirements of § 61.69 to act as PIC of an aircraft towing a glider, which is substantially similar to the current language. 62 Fed. Reg. 16220, 16333 (Apr. 4, 1997). In the preamble to the proposed amendment, the FAA stated this provision would allow a private pilot to act as PIC and log PIC flight time. 60 Fed. Reg. 41160, 41181 (Aug. 11, 1995). This amendment reversed at least part of the Lincoln Interpretation by allowing a private pilot to log PIC flight time when towing a glider, but the preambles to both the proposed and final rules were silent on whether the exception permitted a private pilot to receive other forms of compensation.

In 2004, the FAA amended § 61.113(g) to its current version by adding the towing of unpowered ultralight vehicles to the exception. 69 Fed. Reg. 44772, 44869 (Jul. 27, 2004). The preamble to that final rule states, "The FAA is revising § 61.113(g) to allow a private pilot to act as pilot in command while towing an unpowered ultralight vehicle for compensation or hire." *Id.* at 44836. This statement does not suggest a changed interpretation of § 61.113 aside from the inclusion of towing unpowered ultralight vehicles.

Your letter also mentions some Frequently Asked Questions (FAQs) concerning the issue of compensation for private pilots towing gliders that were answered between the 1997 and 2004 final rules. These FAQs represented the policy of the Flight Standards Service but were not an official legal interpretation from the Office of Chief Counsel. Moreover, the FAA formally withdrew the FAQs and removed them from the FAA website.

Although the language of § 61.113(g) merely allows a private pilot to act as PIC when towing, § 61.113 prescribes the limits of acting as PIC for compensation or hire. The exception in § 61.113(g) is an exception to acting as PIC for compensation or hire because acting as PIC without compensation had been allowed previously. *See* Lincoln Interpretation. The text of § 61.113(g) does not limit the compensation that a private pilot may receive to only the logging of PIC flight time despite a suggestion to that effect by the Soaring Society of America in a comment to the 1995 NPRM. *See* 62 Fed. Reg. 16220, 16267. Furthermore, the preamble to the 2004 final rule more clearly states the intent of § 61.113(g). Accordingly, § 61.113(g) permits a private pilot to act as PIC for compensation or hire of an aircraft towing a glider or unpowered ultralight vehicle. Nevertheless, although the glider and unpowered ultralight vehicle being towed and its passengers are not considered passengers or property for the purposes of § 61.113(a), § 61.113(a) does not permit a private pilot to carry passengers or property in the tow plane for compensation or hire.

This response was prepared by Robert Hawks, an Attorney in the Regulations Division of the Office of Chief Counsel and coordinated with the General Aviation and Commercial Division 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