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

Office of the Chief Counsel

Office of the Chief Counsel
800 Independence Ave., SW.
Washington, DC 20591

MAR 18 2013

John L. Hancock
[redacted]

Dear Mr. Hancock:

This letter responds to your request for legal interpretation dated October 25, 2012. Specifically you have asked several questions regarding pilot in command limitations for private pilots under § 61.113.

In your letter, you explain that you hold an airline transport pilot certificate and are interested in purchasing a high wing, single engine airplane with fixed landing gear. You would like to add a friend who holds a private pilot certificate to your aircraft insurance policy as an additional insured pilot and permit your friend to borrow the aircraft without charging him for the use. You state that your friend would conduct operations "under part 91, meaning he will not be transporting persons or property for hire." In your facts, you note that your friend already has logged total hours of flight time that exceed the requirements for new or additional pilot certificates and ratings and, thus, the accumulation of flight time is of no value to him. Based on these facts, you have asked the following questions.

Does loaning an airplane to a private pilot amount to compensation in violation of § 61.113? Other than a cash payment from one person to another, what constitutes compensation under § 61.113? If your friend flies passengers with whom he does business without charge, would his desire to obtain future economic benefit from his passengers in the form of future business constitute "compensation?"

Section 61.113(a) states that "no person who holds a private pilot certificate may act as a 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."[1]

The FAA has consistently construed compensation broadly. Compensation "does not require a profit, a profit motive, or the actual payment of funds." Legal Interpretation to Joseph Kirwan (May 27, 2005). Rather, compensation is the receipt of anything of value. The FAA has previously found that reimbursement of expenses (fuel, oil, transportation, lodging, meals, etc.), accumulation of flight time, and goodwill in the form of expected future economic benefit could be considered compensation. Legal Interpretation to John W. Harrington (Oct. 23, 1997); Blakey v. Murray, NTSB Order No. EA-5061 (Oct. 28, 2003).

[1] Section 61.113(c) allows a private pilot to receive a pro rata reimbursement from his passengers for fuel, oil, airport expenditures, or rental fees, so long as the pilot and his passengers share a bona fide common purpose for conducting the flight. Legal Interpretation to Don Bobertz, May 18, 2009; Legal Interpretation to Guy Mangiamele, Mar. 4, 2009.

An item of value is not compensation under the regulations, however, unless the pilot's receipt of it is contingent upon the pilot acting as pilot in command of an aircraft. If you loan your aircraft to a private pilot who pays the expenses associated with the operation of the flight (e.g. fuel) and you are placing no obligation on the pilot (e.g. ferrying your aircraft to a specific location), then it is unlikely that the private pilot would be considered to be acting as pilot in command of an aircraft for compensation or hire. We note that whether a private pilot is receiving something of value in exchange for acting as pilot in command is determined on a case-by-case basis and depends greatly on the purpose and objective of the flight.

Does the owner of a private airplane bear any regulatory responsibility if, unbeknownst to him, a person borrowing his plane flies passengers or cargo for hire in violation of § 61.113(a)? Does the owner of a private airplane have a duty to monitor a friend's use of the airplane so as to ensure the friend does not fly passengers or cargo for hire in violation of § 61.113(a)?

Section 61.113 addresses the obligation of a private pilot who is acting as pilot in command of an aircraft. As the owner of the aircraft, you would not be liable for a violation of this specific regulation because you are not the pilot of the aircraft. We note, however, that, with regard to operating rules in part 91, the FAA has previously held that a person who "operates" an aircraft could be someone other than the pilot flying the aircraft. In the Matter of Fenner, FAA Order No. 1996-17 (May 3, 1996), aff'd Fenner v. FAA, 113 F.3d 1251 (11th Cir. 1997). In Fenner, a pilot loaned his airplane to an unidentified pilot who operated it in a reckless manner. Even though the owner of the airplane was not on board, the Administrator concluded that the owner had "operated" the airplane in violation of § 91.13, 91.111, and 91.113 because he had given the pilot permission to use the aircraft. This conclusion was based on the statutory definition of "operate aircraft"[2] and the regulatory definition of "operate."[3]

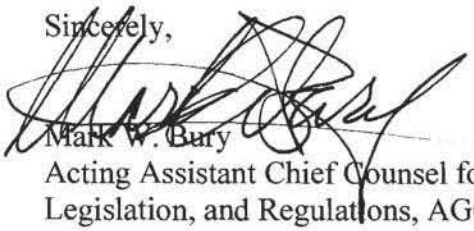
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[2] "Operate aircraft" or "operation of aircraft" mean using aircraft for the purpose of air navigation, including "causing or authorizing the operation of aircraft with or without the right of legal control of the aircraft." 49 U.S.C. § 40102(a)(32).

[3] Section 1.1 defines "operate" as "with respect to an aircraft, means use, cause to use, or authorize to use aircraft, for the purpose (except as provided in §91.13 of this chapter) of air navigation including the piloting of an aircraft, with or without the right of legal control (as owner, lessee, or otherwise)."

This response was prepared by Anne Moore, an attorney in the International Law, Legislation, and Regulations Division of the Office of the Chief Counsel, and has been coordinated with the Airman Certification and Training Branch of Flight Standards Service. If you have any additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,



Mark W. Bury
Acting Assistant Chief Counsel for International Law,
Legislation, and Regulations, AGC-200