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

Office of the Chief Counsel

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

SEP 13 2013

Randy Howell
The Patriots Jet Team
5592 Drakes Drive
Discovery Bay, CA 94505

Dear Mr. Howell:

This letter responds to your request for a legal interpretation of 14 C.F.R. §§ 61.23 and 61.113 emailed on August 25, 2013. Specifically, you ask whether a pilot is permitted to fly at an airshow performance while exercising the privileges of a private pilot certificate (and corresponding third class medical certificate) if the pilot does not receive any compensation, does not log flight time toward an additional certificate or rating, and does not receive "additional benefits, amenities, or privileges than any other flight or ground crewmember volunteer."

Subject to some specific exceptions (none of which likely apply to your situation), § 61.113(a) states that "no person who holds a private pilot certificate may 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 61.23 establishes the medical certificate requirements when exercising the privileges of a pilot certificate. It states, in relevant part, that at least a third class medical certificate is required to exercise the privileges of a private pilot certificate; a second class medical to exercise the privileges of a commercial pilot certificate; and usually a first class medical to exercise the privileges of an airline transport pilot certificate.

Your letter quotes a previous legal interpretation of the pilot certificate and medical certificate requirements for pilots flying at airshows and other aviation events, and this interpretation is instructive. *See* Legal Interpretation to John W. Harrington (Oct. 23, 1997). If no compensation or hire is involved for acting as pilot in command of an aircraft during an airshow, the pilot is exercising the privileges of a private pilot certificate without violating § 61.113 (regardless of the certificate level issued), and at least a third class medical certificate is required. If compensation or hire is involved for acting as pilot in command of an aircraft during an airshow, the pilot is exercising the privileges of a commercial pilot certificate, and at least a second class medical certificate is required. The

privileges and limitations for a commercial pilot certificate are set forth in 14 C.F.R. § 61.133. Section 61.133(a)(1)(ii) states, in relevant part, a person who holds a commercial pilot certificate may act as pilot in command of an aircraft for compensation or hire.

The FAA has a long-standing policy for defining compensation in very broad terms. *See* Harrington Interpretation; *see also* Legal Interpretation to Joseph A. Kirwan (May 27, 2005) (defining "compensation" as "the receipt of anything of value"). Any reimbursement of expenses (fuel, oil, transportation, lodging, meals, etc., if conditioned on the pilot operating the aircraft) is compensation. *Id.* Additionally, the logging of flight time is compensation if the pilot does not have to pay the costs of operating the aircraft. *Id.* The Harrington Interpretation provides a detailed analysis of whether receipt of lodging, transportation, and meals is compensation, which is the touchstone of your inquiry:

> The determining factor in whether these items would be considered compensation is whether they are conditioned upon the [Confederate Air Force (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.

The determining factor is whether the amenities are provided in exchange for acting as pilot in command. While the provision of equivalent amenities for pilots flying at the airshow and other airshow volunteers is not determinative, it could be a factor considered in making such a determination. Although the facts presented are insufficient to definitively state whether the airshow pilots are receiving compensation for acting as pilot in command, there is a likelihood this is the case. If they are receiving compensation, the pilots are exercising the privileges of a commercial pilot certificate and must have at least a second class medical certificate.

This response was prepared by Robert Hawks, an Attorney in the International Law, Legislation, and 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,

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