

**SSA ANNOUNCES AN IMPORTANT CHANGE IN TOWING RULES:
PRIVATE TOW PILOTS MAY TOW GLIDERS
FOR COMPENSATION OR HIRE UNDER SSA INSURANCE POLICY**

One of the challenges facing many soaring clubs and commercial operators in recent years has been the difficulty in finding qualified tow pilots. Until very recently, most of the soaring community was under the impression that a glider tow pilot was required to hold a Commercial level certificate with their Single Engine Land (SEL) power rating unless he or she was towing without compensation or other financial benefit. As a result, the decline in the number of Commercial tow pilots has posed difficulties for many soaring operations and, in particular, for many soaring contests.

SSA is pleased to report that this situation has now changed. SSA recently obtained a legal opinion from the FAA office of Chief Counsel stating that pilots who carry only a Private, Single Engine Land (SEL), pilot's certificate may tow gliders or ultralights for compensation or hire. On the basis of this FAA legal opinion, we have now obtained a modification of our SSA group insurance program that provides insurance coverage for glider tows by tow pilots with only a Private pilot certificate where the soaring operation and the tow pilots meet certain qualifications. The details of these changes are set out below.

BACKGROUND:

For many years, the FAA took the position that no pilot could receive anything of value for service as a pilot unless that pilot held at least a Commercial pilot's certificate. The FAA's position reached its most extreme point in 1990 when the FAA issued a legal interpretation to the Federal Aviation Regulations (FARs) and opined that a Private certificated pilot towing a glider was prohibited even from logging the tow time as Pilot in Command under the theory that the ability to use PIC time toward advanced ratings was "something of value" and therefore forbidden to pilots carrying only a Private pilot's certificate.

Following this 1990 decision SSA quietly but forcefully lobbied the FAA to permit towing by pilots with a Private pilot's certificate. In 1997 the FAA accepted SSA's arguments and modified the FARs. Old FAR § 61.118 was renumbered as § 61.113 and amended to provide expressly that the logging of PIC time by a Private pilot was permitted. However, the 1997 amendments to the FARs did not state whether a Private tow pilot could receive other forms of "compensation" in addition to the ability to log the flight time as a PIC.

Then, in the period 2002 through 2004, the FAA substantially rewrote the FARs to establish regulations for Sport and Recreational pilots. As part of this rewrite, Part 61 of the FARs was amended to state expressly that Private pilots could tow not only gliders, but also unpowered ultra light vehicles. The FAA-written commentary included in the Final Rule notice (issued July 27, 2004) is particularly interesting in that it indicates that under Part 61 a Private pilot may not only log the flight time as a PIC but may otherwise be compensated for the tow. Specifically, the FAA explained the reason it was not permitting Sport and Recreational pilots to tow for compensation or hire as part of the 2002-2004 FAR changes:

While a substantial number of commenters suggested that sport and recreational pilots be allowed to conduct towing operations for hire, the FAA maintains that only private pilots or higher should be permitted to conduct these types of operations. ***Under § 61.69, only a private pilot or higher can tow a glider and is authorized to conduct***

towing operations for compensation or hire under § 61.113.

69 Fed. Reg. at 44833 (July 27, 2004) (emphasis added.)

In the years since 2004 there has been disagreement within the soaring community about the meaning of the FAA commentary language quoted above. Some soaring operators have believed that the language sanctions towing operations, for compensation, by Private tow pilots. Others have held that, out of an abundance of caution, glider towing for hire or compensation should be restricted to pilots holding Commercial certificates.

THE FAA’S 2010 CLARIFICATION OF THE TOWING RULES:

In 2009, then-SSA Chairman Phil Umphres wrote to the FAA Office of Chief Counsel requesting a formal legal interpretation of the rules governing glider towing operations. Specifically, SSA requested that the FAA advise whether Private certificated tow pilots could receive certain specified forms of “compensation” or benefit – such as reimbursement for expenses, meals or lodging – if those pilots towed at a soaring contest.

The FAA elected to answer SSA’s inquiry broadly. In a formal legal opinion dated November 3, 2010, in the clearest of terms, the FAA’s Chief Counsel stated that a Private certificated tow pilot who is otherwise qualified to tow gliders under FAR § 61.69 may tow for compensation or hire, so long as the tow pilot does not carry passengers or other property in the tow plane. The key language from the FAA November 3, 2010 opinion follows:

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 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 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.

(Emphasis added.) The full FAA legal opinion is available on the FAA website (go to: [HYPERLINK "http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/agc200/interpretations/data/interps/2010/Umphres.pdf"](http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/agc200/interpretations/data/interps/2010/Umphres.pdf) http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/agc200/interpretations/data/interps/2010/Umphres.pdf) as well as under the postings for “News” on the SSA’s website homepage.

Formal legal opinions of a federal agency’s Office of Chief Counsel are – as a general proposition of law – binding against that agency. In the case of the FAA, opinions of the Office of

Chief Counsel are binding not only against the FAA, but also against the NTSB.

INSURANCE ISSUES

In this day and age, few tow pilots would conduct a glider towing operation – whether on a voluntary basis for their club, at a contest, or for a sightseeing or commercial operation – unless they were adequately insured in the event the tow resulted in an accident. Until recently, all insurance policies of which SSA’s leadership have knowledge expressly required that tows for compensation or hire be conducted by a tow pilot holding a Commercial pilot’s certificate. Indeed, until recently the SSA’s group insurance program carried such a requirement.

After receiving the FAA’s November 3, 2010 opinion, SSA’s leadership approached SSA’s insurance broker, Pat Costello of Costello Insurance Associates, and requested that he obtain approval from our underwriter for insurance of glider tows for hire by properly qualified Private tow pilots. SSA’s insurance carrier has given its approval for policyholders who meet the following qualifications:

1. The policyholder (club or commercial operator) must be a member of the SSA and insured under the SSA’s group insurance program.
2. The aircraft must be owned by or leased to the policyholder and listed as an insured aircraft within the policy.
3. Commercial policyholders already have policy approval for glider tow for hire and not for hire. Once their policy is amended, they may use Private certificated pilots for commercial glider tows.
4. Clubs typically have a policy that approves glider tow not for hire; however, they may have certain for hire exceptions; i.e. towing for hire at SSA sanctioned contests. Once their policy is amended, they may use Private pilots for approved commercial glider tows.
5. Existing policyholders who have been tow plane “loss free” for the previous three years will qualify.
6. Existing policyholders who have previous tow plane losses will be evaluated individually.
7. Policyholders who are new clients to the SSA Insurance Program will have a year waiting period before they are eligible for this new policy enhancement.

It is important for clubs and commercial operators who are presently insured under the SSA Group Plan to understand that coverage for glider tows by Private pilots does not begin until the policyholder’s insurance policy is formally modified. Currently insured clubs and commercial operators with a satisfactory loss history will have their policies amended at the next renewal date. Clubs and commercial operators who are not currently insured under the SSA Group Plan but who join the plan in 2011 or later will receive the enhanced pilot wording at their first renewal, provided they qualify based on their loss history.

The insurance for most SSA clubs and commercial operators renews in the spring and summer each year. Policyholders who wish to insure commercial glider tows by Private pilots before their 2011 renewal date should contact Costello Insurance who will consult with the insurance company to see if this policy enhancement can be provided early.

There is no additional premium charge for this policy enhancement!

CAVEATS:

Most readers will appreciate that the changes to the towing rules and insurance coverage discussed above are somewhat complex and – not surprisingly – involve legal interpretations of FAA rules and regulations. SSA feels confident enough about our analysis of the FAA's November 3, 2010 legal opinion to have obtained a major modification to the policies issued under our group insurance plan in order to permit insured tows for compensation or hire by Private certificated pilots. However, SSA does not provide legal advice to its members. Ultimately, it is the responsibility of each pilot, soaring club and commercial operator to reach their own conclusions about the impact of the November 3, 2010 opinion by the FAA's Chief Counsel and the requirements for lawful flight operations.

Moreover, while SSA has obtained a modification to our Group Plan to provide for insurance of glider tows provided for compensation or hire by Private certificated pilots, insurance policies by other insurance carriers may still require that such tows be by a pilot with a Commercial pilot's certificate. Soaring clubs and operators who are not currently insured under the SSA Group Plan are cautioned to check with their insurance provider to confirm coverage before providing commercial tows with Private certificated pilots.

Finally, at the end of the day the safety of a tow depends more on the skill, ability and currency of the tow pilot than on whether he or she carries a Private or a Commercial level pilot's license. The health of our sport – and of our group insurance program – depends on the proper selection and supervision of tow pilots by our clubs and commercial operators. The burden remains on you. Don't allow a pilot to tow for your Club or commercial operation – whatever the pilot's certificate level – unless you are satisfied that they are competent to provide a safe aerotow.