

paragraph, in the third line, "2005-04-15" is corrected to read "2006-04-15".

On page 53938, in the first column, in the second line, "2005-04-15" is corrected to read "2006-04-15".

### § 39.13 [Corrected]

■ On page 53938, in the third column, in paragraph (b), in the first line, "2005-04-15" is corrected to read "2006-04-15".

Issued in Burlington, Massachusetts, on October 1, 2007.

**Peter A. White,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Parts 91, 119, 121, and 135

[Docket No. FAA-2006-24260]

#### Exemptions for Passenger Carrying Operations Conducted for Compensation and Hire in Other Than Standard Category Aircraft

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of policy statement.

**SUMMARY:** This document identifies and provides guidance on the current FAA policies regarding requests for exemption from the rules governing the operation of aircraft for the purpose of carrying passengers on living history flights in return for compensation. Specifically, this document clarifies which aircraft are potentially eligible for an exemption and what type of information petitioners should submit to the FAA for proper consideration of relief from the applicable regulations.

**DATES:** This policy becomes effective on October 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** General Aviation and Commercial Division, Certification and General Aviation Operations Branch (AFS-810), Flight Standards Service, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8212.

#### SUPPLEMENTARY INFORMATION:

##### Background

In 1996, the FAA granted an exemption from various requirements of part 91 and part 119 to an aviation museum/foundation allowing the exemption holder to operate a large, crew-served, piston-powered,

multiengine, World War II (WWII) bomber carrying passengers for the purpose of preserving U.S. military aviation history. In return for donations, the contributors would receive a local flight in the restored bomber.

The petitioner noted that WWII combat aircraft are unique in that only a limited number remain in flyable condition, and that number is declining with the passage of time. In addition, the petitioner noted replacement parts and the specific gasoline used by these airplanes will eventually be in short supply, and may substantially reduce the aircraft performance capability or require the airplanes to be grounded.

The petitioner indicated that compensation would be collected to help cover expenses associated with maintaining and operating the WWII airplane. Without these contributions, the petitioner asserted that the cost of operating and maintaining the airplane would be prohibitive.

The FAA determined that these airplanes were operated under a limited category airworthiness certificate. Without type certification under Title 14 Code of Federal Regulations (14 CFR) § 21.27, they are not eligible for standard airworthiness certificates. The high cost of type certification under § 21.27 makes this avenue impractical for operators providing living history flights. Comparable airplanes manufactured under a standard airworthiness certificate did not exist. As a result, the FAA determined that an exemption was an appropriate way to preserve aviation history and keep the airplanes operational. In granting the exemption, the FAA found that there was an overwhelming public interest in preserving U.S. aviation history, just as the preservation of historic buildings, historic landmarks, and historic neighborhoods have been determined to be in the public interest. While aviation history can be represented in static displays in museums, in the same way historic landmarks could be represented in a museum, the public has shown support for and a desire to have these historic aircraft maintained and operated to allow them to experience a flight.

Since the issuance of that exemption, the FAA has received many exemption requests seeking the same or similar relief, even though the particular circumstances were different. These subsequent petitions raised significant concerns within the FAA and led it to reexamine and refine its criteria for issuing exemptions.

For example, petitioners have requested exemptions to operate certain large turbojet-powered aircraft, which

included a foreign-manufactured and operated, surplus military turbojet aircraft. Some turbojet-powered aircraft (L-29, L-39, TS-11, Alfa Jet, etc.) remain in active military service or are readily available in the current international market. The availability of these aircraft is indicative of an increasing market and thus undermines any argument that this aircraft meets the public interest goal of preserving unique, historical aircraft. Additionally, the FAA was concerned that petitioners could not demonstrate that these aircraft had been adequately maintained. Unlike foreign manufactured military surplus aircraft, operators of U.S.-manufactured surplus military aircraft certificated in an airworthiness category (experimental, limited, and restricted category under § 21.25(a)(2)) for which no common standards exist, were required to avoid potential safety issues through (1) the continued operation and maintenance requirements imposed on them, and (2) a requirement to provide adequate documentation of previous operational maintenance history.

As a result of these requests, the FAA published a draft policy notice in the **Federal Register** on March 27, 2006 (71 FR 15087) (Docket number FAA-2006-24260) clarifying its position regarding the issuance of exemptions for passenger carrying operations conducted for compensation and hire in other than standard category aircraft. Two comments were forwarded to the docket for consideration. The first was submitted by individuals who serve as volunteers at the Wright B Flyer Museum. These individuals generally supported the proposal, but asked that it be expanded to include experimental amateur built aircraft, such as their Wright B Flyer replica. Item 1 below (under FAA Policy section) states, "Aircraft holding any category of airworthiness certificate issued under 14 CFR part 21 may be considered for an exemption to provide living history flight experiences." This would include the Wright B Replica.

The other comment, submitted by the Experimental Aircraft Association, addressed several issues. The first issue addressed typographical errors in the numbering sequence of the paragraphs that appeared in the draft notice. The errors were numbering errors and not missing information. They have been corrected. Second, EAA spoke to concerns regarding the revision of operating limitations. EAA states that the current wording of proposed paragraph 10 could lead to the possibility of revised operating limitations exceeding the scope of this proposed policy. This was not the

FAA's intention. Instead, the FAA simply wished to convey the possibility that any exemption may contain operational restrictions beyond what appears in the aircraft's operating limitations. The third recommends adding a paragraph to state that operators with existing exemptions may continue to conduct passenger-carrying operations per those conditions and limitations and that all requirements of this policy would be complied with at their next exemption renewal period. The addition is not necessary. Existing exemptions comply with the policy. Also, we must always reserve the right to revise any existing exemption and its conditions and limitations should a safety need arise.

As a result of ongoing communication with the stakeholder community, the following establishes the FAA's policy regarding the issuance of exemptions for passenger-carrying operations conducted for compensation and hire in other than standard category aircraft.

#### FAA Policy

The FAA recognizes the need for and seeks to promote an exposure to and appreciation of aviation history. By enabling non-profit organizations, identified as such by the U.S. Department of Treasury, to offer living history flights for compensation used to preserve and maintain these aircraft, the public will be assured access to this important part of history.

The regulations in 14 CFR establish appropriate safety standards for aircraft operators and crewmembers. Therefore, an exemption from aviation safety regulations is not routinely granted if the proposed operation can be performed in full compliance with the rules. In addition, the FAA must be persuaded that operation of the affected aircraft will not pose an undue risk to the flying public or to bystanders. The use of former military turbine-engine powered aircraft, in particular, raises several concerns with respect to the type and quality of training available for the flightcrews and maintenance and inspection personnel. Some of the aircraft are complex in nature and some require special skills to operate safely. In addition, there is risk to aircraft occupants, ground personnel, and spectators when military equipment like ejection seat systems, which use armed, explosive pyrotechnic devices, are installed and operational.

The FAA notes that in order to ensure that adequate consideration is given to petitioners intending to operate experimental exhibition, surplus foreign or domestic, turbojet or turbine-powered aircraft, the FAA will closely examine

the proposed operation with respect to safety of flight, passenger safety considerations, and safety of the non-participating public during the operational period and within the operational area. Passenger/flightcrew egress, emergency egress systems such as ejection seats, documentation or statistical make and model operational history, significance of the particular aircraft with respect to the operational history maintenance history, operational failure modes, and aging aircraft factors of individual aircraft will be taken into consideration in the analysis of an exemption request.

The FAA will not automatically exclude any request for exemption for non-standard category aircraft from consideration unless the aircraft was acquired through an Act of Congress and Congress has specified that the aircraft may not be operated for compensation or hire.<sup>1</sup> Rather, the FAA will evaluate each exemption request on a case-by-case basis. Those requesting an exemption from a particular standard or set of standards must demonstrate the following: (1) That there is an overriding public interest in providing a financial means for a non-profit organization to continue to preserve and operate these historic aircraft, and (2) that adequate measures will be taken to ensure safety.

In order to allow the FAA to thoroughly evaluate and provide consideration to each request, petitioners should allow at least 120 days for processing and review of any exemption requests.

The FAA will use the following criteria in deciding whether granting an exemption is in the public interest and does not compromise safety:

1. Aircraft holding any category of airworthiness certificate issued under 14 CFR part 21 may be considered for an exemption to provide living history flight experiences.

2. Exemptions will not be limited to a particular category of aircraft or based on a type of engine; fixed wing or rotorcraft may apply as well as piston or turbine powered aircraft.

3. An aircraft that was not made by a U.S. manufacturer may be considered for an exemption if the operational and maintenance history is adequately documented.

4. Aircraft with crew egress systems will be considered, provided that flightcrew, ground personnel, and passengers have completed a training program approved by the FAA.

<sup>1</sup> In the event an exemption is mistakenly granted for such an aircraft, the exemption shall be void and the FAA may take enforcement action against the operator at any time.

Passenger training programs must be at least as thorough as what is provided by the manufacturer or military service user when preparing an individual for a "familiarization" flight.

5. Aircraft of the same or similar make/model/series cannot be in current production or in significant commercial use for the carriage of passengers. Exceptions may be considered where a particular airframe has documented historical significance.

6. All passenger seats and their installation must:

a. Take into consideration passenger egress in the event of an emergency; and be FAA-approved if installed on type-certificated aircraft; or

b. Meet the military seat and installation standards or equivalent standards in existence at the time the aircraft was manufactured as outlined in 14 CFR 21.27 if installed on experimental aircraft. The Flight Standards District Office (FSDO) having oversight for that aircraft will then ensure the approved maintenance program is modified to incorporate the specific seat inspection procedures.

7. Exemptions will be issued for the sole purpose of providing living history flights to promote aviation and preserve historic aircraft. The operations authorized under these exemptions are specifically not air tour, sightseeing, or air carrier operations. The FAA may stipulate conditions and limitations to the operation to preserve commonality and standardization.

8. The FAA, in determining the public interest derived in any grant of exemption of this nature, will take into consideration the number of existing operational aircraft and petitioners available to provide the historic service to the public.

9. The FAA must be provided with proof that the petitioner is a tax-exempt museum or foundation, recognized as such by the U.S. Department of Treasury, which uses the funds received from exhibitions to enable the continued display of the featured aircraft. The aircraft must be under the operational control of the petitioner.

10. Applicants may be required to submit an operational history of the make/model/type aircraft, or justification with respect to aviation history in order for the FAA to determine the public interest basis for granting an exemption.

11. If a petition for exemption is granted, the conditions and limitations may include revised operating limitations as part of the aircraft's airworthiness certificate. These operating limitations may be more

restrictive than those originally issued to the aircraft.

12. Passengers must obtain a complete briefing prior to departure that adequately describes the differences between aircraft with a standard airworthiness certificate and aircraft holding either an experimental or limited airworthiness certificate (i.e., the FAA has not participated in or accepted the design standards, performance standards, handling qualities, or provided approval or operational acceptance of experimental aircraft, the adequacy of previous maintenance and inspection programs and accomplishment may be in doubt, that the aircraft may not comply with FAA passenger regulations and may be operated under separate maintenance standards). The briefing must also advise that the FAA considers flights in these aircraft to pose a greater public risk than similar activities conducted in standard category aircraft and has approved this exemption on the condition that the passengers taking this flight be apprised of the risks involved in flying in such aircraft and be properly trained in emergency exiting, including proper use of the ejection seat. Petitioners must prepare a "notice" for signature by the potential passenger. While a notice does not absolve the operator of liability in the event of an accident, the document will provide proof that the passenger has been advised of the risks inherent in the type of operation to be conducted.

13. Crew Qualification and Training.

a. Pilots must possess a minimum of a commercial pilot certificate with instrument rating appropriate to the category and class of aircraft to be flown. They must also hold a type rating if required by the type of aircraft flown along with a current second class medical certificate.

b. Initial and recurrent training must be performed to current ATP Practical Test Standards for aircraft requiring a special authorization or type rating to operate.

c. An initial ground and flight-training program must be developed by the organization and completed by all pilots.

d. Recurrent ground training must be developed and completed by all pilots on an annual cycle.

e. An annual proficiency check must be conducted and if necessary, recurrent flight training will be required. A minimum activity level and satisfactory flight proficiency check may allow the requirement for recurrent flight training to be waived.

f. The minimum flight experience required for each pilot position may be

recommended by the petitioner but must be approved by the FAA.

g. Pilots will maintain takeoff and landing currency in each make and model.

h. A system for documenting and recording all crew qualifications, required training, checking and currency must be developed and maintained.

i. All training and checking programs must be approved by the FAA.

14. Maintenance/Inspection of Aircraft.

a. The maintenance history of each individual aircraft must be provided.

b. The petitioner must provide an FAA-approved maintenance/inspection program that may be a program based on military and/or original manufacturer's manuals and must be in accordance with the type certification data sheet and the aircraft's operating limitations.

c. All maintenance and inspections will be documented and recorded.

d. Applicants may be required to submit an operational history of the make/model/type in order for the FAA to verify that the submitted maintenance/inspection program is adequate.

15. All maintenance or operational incidents will be reported to the FSDO in whose district the organization's principal base of operations is located.

16. Passenger Safety and Training.

a. An FAA-approved passenger briefing must be conducted appropriate to the scope of operations. Passengers must be fully informed of the risks associated with the proposed rides, and that occupying a seat in these aircraft may subject the rider to a high level of risk. Some operations may require passenger-briefing cards.

b. The passenger briefing must include emergency egress procedures and passenger seating and safety restraint systems.

c. Passenger training equivalent to that provided for Department of Defense familiarization flights must be approved by the FAA and conducted for all flights involving any of the following:

i. Ejection seats, if the aircraft is so equipped;

ii. High altitude operations, if flight will be conducted above 10,000 feet mean sea level (MSL);

iii. Oxygen system, for flights above 10,000 feet MSL or if use of the system is required by type of operation.

Petitioners who have not previously conducted operations of this type may be required to demonstrate their ability to safely perform the operations requested and to meet all operating and maintenance requirements. The extent of this demonstration will be dependent

on the scope of the operation requested. Petitioners who have conducted this type of operation must provide a summary of their operating history.

Additionally, all petitioners will be required to submit documentation sufficient to allow the FAA to determine the number of passenger seats to be utilized during compensated operations and the FAA approval status of those seats. Petitioners will also be required to provide the U.S. registration number and make/model/serial number of the aircraft to be used.

Those submitting petitions for exemption or additional information should submit the required information to the following: (1) For paper submissions, send the original signed copy of your submission to the U.S. Department of Transportation, Docket Management System, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590 or (2) for electronic submissions, submit your information to the FAA through the Internet using the Federal Docket Management System Web site at this Internet address: <http://www.regulations.gov>. Follow the online instructions for accessing the dockets. If you already have received a docket number, you must reference that docket number in your request.

Issued in Washington, DC, on October 2, 2007.

**James J. Ballough,**

*Director, Flight Standards Service.*

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## DEPARTMENT OF COMMERCE

### Office of the Secretary

#### 15 CFR Parts 19, 21 and 22

[Docket Number: 070216039-7495-02]

RIN 0605-AA24

#### Commerce Debt Collection

**AGENCY:** Office of the Chief Financial Officer and Assistant Secretary for Administration, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule adopts as final the revised Department of Commerce (Commerce Department or Commerce) debt collection regulations to conform to the Debt Collection Improvement Act of 1996, the revised Federal Claims Collection Standards, and other laws applicable to the collection of non-tax debts owed to the Commerce Department. This rule also adopts as