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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 119

Docket No. FAA- FAA-2015-0517

Policy Regarding Living History Flight Experience 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: With this document, the Federal Aviation Administration (FAA) cancels all previous agency policies pertaining to the carriage of passengers for compensation on Living History Flight Experience (LHFE) flights. This policy statement announces the end of FAA moratorium on new petitions for exemption, or amendments to exemptions from certain sections of Title 14, Code of Federal Regulations (14 CFR) for the purpose of carrying passengers for compensation or hire on LHFE Flights.

DATES: The moratorium will end on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: General Aviation and Commercial Division, General Aviation Operations Branch (AFS-830), Flight Standards Service,

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SUPPLEMENTARY INFORMATION:

Background

The FAA has historically found the preservation of U.S. aviation history to be in the public interest, including preservation of certain former military aircraft transferred to private individuals or organizations for the purpose of restoring and operating these aircraft. In 1996, the FAA received exemption requests from not-for-profit organizations to permit the carriage of persons for compensation in both Limited and Experimental category, former-military, historically-significant aircraft. These requests offered to provide a short in-flight experience to these aircraft in exchange for compensation, leading to the term Nostalgia Flights, then later Living History Flight Experience (LHFE), and provided a means for private civilian owners to offset the considerable restoration, maintenance and operational costs. The FAA determined that, in certain cases, operators could conduct LHFE flights at an acceptable level of safety and in the public interest, in accordance with appropriate conditions and limitations.

These original requests involved large, crew-served, piston-powered, multi-engine World War II (WWII) vintage aircraft. In order to maintain safe operations of these aircraft, the FAA required flight crewmembers to meet certain qualifications and training requirements that included FAA-approved training, maintaining training records, and reporting procedures. As the public availability of purchase for former military aircraft increased, along with an increase in public interest for maintaining and operating these aircraft, so grew the requests for LHFE relief.

In 2004, to address a range of new aircraft requests and clarify the FAA's position, the FAA published a notice of policy statement (FAA-2004-17648). The policy limited LHFÉ relief to slower, piston-powered, multi-engine airplanes of WWII or earlier vintage, citing the unique opportunity to experience flight in aircraft such as the B-17 Flying Fortress and B-24 Liberator which could still be operated safely, considering limited parts and specialty-fuel supplies. In addition, qualifying aircraft would have no similar standard airworthiness counterpart that could allow a similar experience without the need for regulatory relief. The FAA also determined supersonic jets would not be considered because their operational speeds made it likely that any in-flight emergency may result in serious injuries or fatalities. The policy detailed that, in permitting the carriage of passengers, flight crewmembers were required to meet more stringent pilot qualifications as well as training requirements that included an FAA-approved training program, maintenance of training records, and reporting procedures.

In the years that followed, the FAA received petitions to operate a broad range of aircraft, including large turbojet-powered aircraft, foreign-manufactured aircraft and aircraft models that remained in military service, or were readily available in the open market. The petitions raised significant concerns within the FAA, and led to a reexamination and refinement of the criteria for issuing exemptions pertaining to LHFÉ flights.

In 2007, after requesting and receiving public comment on the matter, the FAA published an updated policy statement (72 FR 57196) that provided consideration for any aircraft on a case-by-case basis, so long as the petitioner demonstrates that (1) 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) adequate measures, including all conditions and limitations stipulated in the exemption, will be taken to ensure safety. Additionally, the FAA refined and expanded its previous list of criteria, requiring numerous aircraft-operation components, including crew qualification and training, aircraft maintenance and inspection, passenger safety and training, safety of the non-participating public, as well as manufacturing criteria, and a petitioner's non-profit status. The FAA also included consideration for the number of existing operational aircraft and petitioners available to provide the historic service to the public.

The evolution of LHFE operations in the private sector, along with the availability of newer and more capable former military aircraft, raised new public safety and public policy concerns. The FAA accommodated several requests to operate more modern military jet aircraft. Conditions and limitations for operations grew in number, and were, in some cases, misinterpreted as permitting operations that the FAA did not contemplate or intend. Examples included cases of passengers manipulating the aircraft flight controls to proposals of LHFE flights performing aerobatic maneuvers, simulating aerial combat in the interest of "historical experience."

Consequently, in 2011, the FAA published a new policy statement announcing a moratorium on LHFE exemptions for new operators and the addition of aircraft to existing LHFE exemptions. The moratorium permitted existing exemption holders to continue operations, and to renew their exemptions, but stated that the FAA would add clarifying limitations to all LHFE petitions renewed or extended during that time.

In June of 2012, the FAA held public meetings to gather additional technical input. Discussion addressed 35 questions posed by the FAA and included as part of the

meeting notice. In addition to statements provided by the public meeting attendees, over 500 comments were received in the docket (Docket No. FAA-2012-0374) established for public input. The meeting was focused to address industry comments related to the LHFE policy notices of 2004 and 2007 and areas of concern based on safety recommendations, FAA internal discussions, and post 2007 developments. Small work groups were formed to discuss general policy, exemption issuance, limitations, weather minimums, pilot qualification and currency, and maintenance and inspection. The area of interest that generated the most discussion was regarding limitations placed on LHFE operations—specifically, passengers occupying crew seats or positions, aerobatics, and requirements for arresting gear for high performance jets. The largest general policy topic discussed was regarding whether the FAA planned on excluding turbojets or supersonic aircraft in the policy. The work groups also explored criteria for determining historical significance, replicas, operational control and responsible persons, manuals, compliance history, and training requirements.

The majority of the 519 written comments were either in favor of keeping the existing exemption policy or expanding on its provisions. Fifty-nine (11%) comment submissions desired no changes to the current LHFE policy. Eight commenters provided detailed comments to each of the questions posed within the FAA's areas of interest. In regards to training, safety and operational control, a commenter stated his belief that the employees/pilots/crew of the aircraft for hire have annual training and that the aircraft should be on an FAA/manufacture approved inspection program, and that this training and adherence to the required and recommended inspections/maintenance provides a reasonable level of government protection to the flying and non-flying public. Eight

commenters suggested a more restrictive LHFE Exemption policy, and one commenter supported the use of drug testing for LHFE flight crews. One commenter suggested that good guidance already exists in the A008 Operations Specification of Part 135 certificate holders, and that much of that guidance can be reasonably applied to LHFE. The FAA concurs and finds good reason to include certain elements found in part 135; specifically those related to operational control and document structure. 516 (99%) written comments expressed support for LHFE exemptions, while three (1%) were opposed.

The FAA also held meetings with curators at the Smithsonian National Air and Space Museum and reviewed the United States General Accounting Office (GAO) report on Preserving DOD Aircraft Significant to Aviation History to understand how other organizations determine “historical significance” as part of determining criteria to satisfy “public interest”.

Also during the moratorium, two accidents involving LHFE operators occurred which led the FAA to further research and develop safety mitigations to operational and maintenance issues highlighted by the investigations. The need to develop a safety and risk management system as part of the new policy was evident, and supported by comments received. One such comment stated, in part that it is important to try and mitigate some of the risks and to inform the public about the risks of the activity.

Therefore, based on FAA research, comments and transcripts of the public meeting, as well as an evaluation of public safety risks, the FAA finds good reason to publish a new policy. While the FAA is lifting the 2011 moratorium with this policy, we are also setting forth specific criteria that the FAA will use in considering any LHFE petition for exemption, or petition to extend or amend an existing exemption.

FAA Policy

The FAA announces the end of the FAA-imposed moratorium on new petitions for exemption, or amendments to existing exemptions, from certain sections of 14 CFR for the purpose of carrying passengers for compensation or hire on LHFE flights. The FAA is also cancelling all previously issued LHFE policy statements. The FAA will now consider new petitions for exemption, or requests for extensions or amendments to current exemptions in accordance with the following criteria.

A. Aircraft Must be “Historically Significant”

Each aircraft must be “historically significant” according to the following criteria:

- 1. U.S. operated:** The aircraft must meet a documented set of U.S. military standards for its airworthiness and operations in U.S. military service.
- 2. Not in service:** Aircraft currently operated by the U.S. military or in civilian service will not be considered. This exclusion includes variants of those aircraft.
- 3. Fragile:** The aircraft must be “fragile.” Accepted practices in the collection of aircraft include “fragility” as a factor that necessitates preservation. If there are hundreds of models of a particular aircraft still flying, that aircraft’s existence would not be considered “fragile.” If, on the other hand, there are few remaining aircraft and the model could become “extinct” without preservation efforts, that aircraft would be considered “fragile.” Each aircraft request will be reviewed for “fragility” on a case-by-case basis.

4. **Age:** The original type design must be at least 50 years old. This requirement is consistent with the policy used by the National Register of Historical Places to determine historical significance (Reference: National Register Bulletin: Guidelines for Evaluating and Documenting Historic Aviation Properties. US Department of Interior, 1998, p. 34-35).
5. **No Available Standard Category Aircraft:** Aircraft for which a standard category civilian model is available will not be considered. (e.g., the T-28A achieved certification as a standard aircraft, while the other versions, T-28B/C, etc. were strictly military variants and not eligible for certification in the standard category).

Replicas will not be considered. This element relates to the “integrity” of the structure or object as defined by the National Register of Historical Places, as described in the GAO report on Aircraft Preservation (Reference: Aircraft Preservation: Preserving DOD Aircraft Significant to Aviation History, GAO/NSIAD-8-170BR, May 1988, Appendix III, p. 13).

B. Designation of a Responsible Person and Operational Control Structure

The FAA will review each petition to identify a responsible party, and an operational control structure or chain of command within the manual system for pilots, maintenance, and support personnel. Consequently, each petition should designate a responsible person whom the FAA can contact for both operations and maintenance functions.

C. Safety & Risk Analysis

The FAA will use Safety Risk Management (SRM) and Equal Level of Safety (ELoS) principles to guide its safety review in connection with any future LHFE exemption petition or request. This safety review will include, but will not be limited to, an analysis of whether hazards and risks have been identified and responded to through appropriate mitigating strategies. As such, each petitioner should be guided by the following criteria:

- An understanding and use of Safety Risk Management (SRM) principles.
- A plan to mitigate risks as they become known, or to correct an unsafe condition or practice. This includes, but is not limited to, risks in design, manufacturing, maintenance and operations.
- A detailed explanation of all supporting and historical safety-related data, such as: maintenance history, airworthiness status, conformity to the Type Certificate Data Sheet (TCDS—for Limited category airworthiness certificates), operational failure modes, aging aircraft factors, and civilian and military accident rates. For example, the FAA will consider:
 - Operator history, including accidents and incidents, regulatory compliance and FAA surveillance history.
 - Maintenance records, including modifications.
 - Training records.
 - The aircraft's operational history, including the operator's proposed mitigation of known risks.
 - Operating limitations to enhance safety, clarify, and remediate differences in like aircraft.

- The FAA will assess and, if necessary, require changes to passenger safety in terms of configuration, seats, crashworthiness, and emergency egress, etc.
- The operator should be able to demonstrate to the FAA, upon request, the passenger's ability to egress each aircraft in the event of an emergency in which the crewmember(s) is unable to assist.

D. Manual System

LHFE operators should be able to demonstrate the existence of a manual system similar in terms of intent and scope of those in 14 CFR part 135. The FAA will evaluate the operator's manuals, including:

- Operations Manual (General Operations Manual-GOM).
- Pilot Training Manual and Qualifications.
- Maintenance and Line Support Training Manuals.
- Maintenance Manual (AIP) including, but not limited to:
 - Review of previously approved AIPs as provided by 14 CFR § 91.415
 - Maintenance training elements.
 - Replacement plan for time-limited parts or development of an on-condition inspection program for such parts.
 - Aging aircraft inspection program.
 - Corrosion inspection program.
 - Continued Operational Safety (COS).
- SMS Manual.

E. Other Considerations

LHFE operations, as it applies to the passenger(s) experience, is limited to the sole purpose of being onboard the aircraft during flight. The FAA will not consider expanded operations such as flight training, aerobatics, and passenger manipulation of the flight controls.

The FAA will always consider whether a request benefits the public as a whole and how the request would provide a level of safety at least equal to that provided by the rule in accordance with 14 CFR 11.81. Moreover, the FAA may impose additional conditions and limitations or deny petitions regardless of this policy statement to adequately mitigate safety concerns and risk factors as they become known.

Filing a Petition for Exemption or to Request an Amendment or Extension to an Existing Exemption

To submit a petition for exemption or to request an amendment or extension to an existing exemption, all petitioners must follow the procedures set forth in part 11 of title 14 of the Code of Federal Regulations.

Issued in Washington, DC, on July 10, 2015.

John S. Duncan

Director, Flight Standards Service