

FLIGHT-WATCH

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FAA IMPOSES MORATORIUM ON EXEMPTIONS FOR LIVING HISTORY FLIGHT EXPERIENCES

In 1996, the FAA granted an exemption from various requirements of Part 91 and Part 119 to aviation museums/foundations allowing the exemption holder to operate large, crew-served, piston-powered, multiengine, World War II bomber aircraft carrying passengers for the purpose of preserving aviation history. In return for donations, these museums have operated the aircraft on local flights for the public to experience flight operations in a World War II aircraft. These are frequently referred to as Living History Flight Experiences (LHFE).

Second World War aircraft are not eligible for a standard airworthiness certificate. The high cost of type certification under 14 CFR § 21.27 makes a standard airworthiness certificate an impractical approach for operators of living history flights. Rather, these World War II aircraft are typically operated under either a limited or experimental category airworthiness certificate. Comparable aircraft manufactured under a standard airworthiness certificate do not exist.

The FAA determined that the exemption was appropriate to preserve aviation history and keep the airplanes operational. Further, in granting exemptions, the FAA found that there was an overwhelming public interest in preserving U.S. aviation history, just as historical buildings, landmarks and historic neighborhoods have been determined to be in the public interest.

While aviation history can be represented in static display museums, the public has shown support for and a desire to have these historic aircraft maintained and operated to allow the public to experience flights in these aircraft.

A 2004 FAA Policy Statement limited LHFE exemptions to World War II or earlier vintage airplanes. The reasons enumerated in that statement addressed both the unique public interest and the public safety in the operation of older and slower multi engine airplanes allowing time for corrective measures in the event of an inflight emergency. Furthermore, the flight crews must meet FAA qualifications and training requirements. In that 2004 Policy Statement, the FAA declared that it did not believe it is prudent to grant exemptions from the FAA regulations to operators of supersonic jets.

The 2004 Policy Statement notwithstanding, the FAA has accommodated several industry requests to allow the operation of more modern military aircraft such as the McDonald Douglas F-4 Phantom and the McDonald Douglas A-4 Skyhawk. However, in the operation of these sophisticated jet aircraft, there are over 45 conditions and limitations that the exemption holder must comply with to operate the aircraft in compliance with the exemption.

In a 2007 Policy Statement, the FAA indicated it would consider petitions for exemptions for turbine-powered aircraft on a case-by-case basis. In that 2007 Policy Statement, the FAA declared that it would examine the proposed operation with respect to safety of flight, passenger safety considerations, and the safety of the non-participating public during the operational period and within the operational area before approving a LHFE exemption. The FAA also said that other considerations applied such as passengers/crew egress, emergency egress systems such as ejection seats, model operational history, historical significance of the particular aircraft, maintenance history, operational failure mode, and aging aircraft factors. The 2007 FAA Policy Statement also observed that some aircraft in question are complex in nature requiring special skills to operate the aircraft safely and military equipment such as ejection

seat systems impose additional risks to aircraft operators, ground personnel, and non-participating bystanders on the ground.

The 2007 FAA Policy Statement also found that there is an overriding public interest in providing a financial means for nonprofit organizations to continue to preserve and operate these historic aircraft and that adequate measures will be employed to ensure safety.

As part and parcel of this 2007 Policy Statement, the FAA found that the operation of LHFE aircraft were not air tour flights or sight seeing flights but were historical experiences in these aircraft. The 2007 Policy Statement by the FAA declared that it would consider exemptions in the future in light of public interest in the activity and taking into the consideration the number of existing operational aircraft and petitioners available to provide historic service to the public.

In a March 23, 2011 Notice published in the Federal Register, the FAA has imposed a moratorium on the issuance of any new LHFE exemptions. In publishing the Notice, the FAA indicated that if an exemption is due to expire during the moratorium, the FAA will accept and process petitions to extend current exemptions in accordance with the established regulatory exemption process. In the meantime, the FAA has imposed two additional conditions on LHFE flights to wit: (1) passengers are prohibited from manipulating the aircraft flight controls while the aircraft is operating under the LHFE exemption; (2) no aerobatics may be performed in the aircraft while operating under the LHFE exemption. According to this most recent notice published by the FAA in the Federal Register, it expects to publish a new proposed LHFE policy for comment on or before September 30, 2012. Anyone concerned with this announcement by the FAA may contact John W.

McGraw, Action Director, Flight Standards Service or Raymond Stinchcomb, General Aviation and Commercial Division, General Aviation Operations Branch (AFC-830), Flight Standards Service, FAA, 800 Independence Avenue, S.W., Washington, D.C. 20591, phone 202.267.8212.

Moratorium On New Exemptions For Passengers Carrying Operation Conducted For Compensation And Hire in Other Than Standard Category Aircraft. 76 Fed. Reg. 16239 (March 23, 2011).

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