

Exemption No. 7162

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC 20591

In the matter of the petition of
THE EXPERIMENTAL AIRCRAFT
ASSOCIATION, THE SMALL AIRCRAFT
MANUFACTURERS ASSOCIATION, AND THE
NATIONAL ASSOCIATION OF FLIGHT
INSTRUCTORS

for an exemption from
Section 91.319(a)(2)
of Title 14, Code of
Federal Regulations

Regulatory Docket
No. 29661

GRANT OF EXEMPTION

By letter dated July 15, 1999, Mr. Thomas P. Poberezny, President, Experimental Aircraft Association (EAA), P.O. Box 3086, Oshkosh, Wisconsin 54903-3086; Mr. Paul C. Fiduccia, President, Small Aircraft Manufacturers Association (SAMA), 4226 King Street, Alexandria, Virginia 22302; and Mr. Sean Elliott, Executive Director, National Association of Flight Instructors (NAFI), P.O. Box 3086, Oshkosh, Wisconsin 54903-3086, petitioned the Federal Aviation Administration (FAA) on behalf of the members of EAA, SAMA, and NAFI for an exemption from Section 91.319(a)(2) of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption, if granted, would permit EAA, SAMA, and NAFI members who own aircraft with an experimental certificate to be compensated for the use of the aircraft in transition training conducted by authorized flight instructors.

The petitioner requires relief from the following regulation:

Section 91.319(a)(1) and (2) prescribes that no person may operate an aircraft that has an experimental certificate for (1) other than the purpose for which the certificate was

issued or (2) carrying persons or property for compensation or hire.

AFS-99-479-E

The petitioner supports its request with the following information:

The petitioner states that according to EAA data, amateur-built, experimental aircraft are the fastest-growing segment of general aviation and compose more than 20 percent of the active single-engine general aviation fleet of aircraft. Additionally, the petitioner states that these aircraft frequently have handling and performance characteristics different than comparable aircraft with standard airworthiness certificates. However, the petitioner notes aircraft with special airworthiness certificates that have completed the initial flight test phase have been demonstrated to be safe, with accident rates roughly equal to comparable aircraft with standard airworthiness certificates.

The petitioner states that on August 29, 1997, the National Transportation Safety Board (NTSB) issued Safety Recommendation No. A97-55, which addressed several accidents involving amateur-built aircraft. The petitioner further states that in 1995, of the 140 accidents involving single, reciprocating-engine, amateur-built, experimental aircraft in which information about the pilot's flight time in the type of aircraft was available, almost 30 percent of the accidents involved pilots with 10 or fewer hours in that type of aircraft.

The petitioner indicates the majority of pilots of aircraft with special airworthiness certificates learn to fly in aircraft with standard airworthiness certificates that have demonstrated stability, control, and performance characteristics that promote ease of operation. The petitioner maintains that a pilot's transfer of learning from an aircraft with a standard airworthiness certificate to one with a special airworthiness certificate is insufficient for even seasoned general aviation pilots without transition training.

The petitioner contends that many of the accidents involving aircraft with special airworthiness certificates may be

related to the limited availability of flight training in the types of aircraft unique to this segment of aviation. The petitioner indicates that in Safety Recommendation No. A97-55, the NTSB found that builders of aircraft with experimental certificates were in need of the opportunity to receive flight training in flight-tested aircraft before conducting initial flight tests in their own newly built aircraft. The petitioner states that the NTSB recommended that Section 91.319(a)(2) be changed to increase the availability of transition flight instruction in experimental airplanes built from kits.

The petitioner states that several years ago, in response to a high accident rate in high-performance kit aircraft, SAMA created a program of type-training and condition inspection for such aircraft. The petitioner further states that this program, conducted in conjunction with AVEMCO Insurance Co., resulted in a large number of pilots of high-performance kit aircraft receiving transition training on aircraft owned by the kit company and registered as crew training aircraft.

The petitioner contends that the kit company does not have the capacity to provide training to all those pilots completing its moderate-performance aircraft kits. The petitioner states that to provide transition training for these aircraft, it is necessary to use airplanes owned by other builders. The petitioner adds that having a number of instructors located around the country would make it easier for pilots to get training without extensive travel, thereby increasing the number of pilots who take advantage of the training.

The petitioner states that to provide necessary safety benefits to their members, EAA, SAMA, and NAFI voluntarily would develop appropriate guidance and promotional materials to ensure successful implementation of the exemption. The petitioner further states that as part of a successful program, EAA, SAMA, and NAFI also would suggest additional inspection requirements to ensure a continued higher level of airworthiness for aircraft with special airworthiness certificates.

The petitioner states the intent is to provide a safe method for pilots to be trained in aircraft similar or identical to those they are building, restoring, or purchasing. The petitioner adds that EAA, SAMA, and NAFI wish to keep in

place the restrictions that limit the use of aircraft with special airworthiness certificates to their intended purpose of transition training, and would not permit initial training.

The petitioner states that the proposed exemption is in the public interest because it would provide a safety benefit to all of society by reducing the number of accidents, injuries, and fatalities in this segment of aviation. The petitioner further states that the positive effects of the proposed exemption would increase the overall safety of general aviation and result in increased economic activity in aircraft sales and aviation support activities, and an increased economic benefit to other supporting industries, such as hotels and tourism.

A summary of the petition was published in the Federal Register on October 7, 1999 (64 FR 54725). One hundred thirty comments were received, including 127 comments in support of the EAA/SAMA/NAFI petition, 1 comment in opposition, and 2 comments submitted to the wrong docket.

The opposing commenter states many flight instructors never have flown experimental aircraft and are not qualified to provide instruction in these aircraft. The commenter notes that many experimental aircraft of the same type have handling and performance characteristics completely different from each other.

The FAA does not agree with the comment. While some instructors may not be familiar with a particular aircraft, it is unlikely that the owner of such an aircraft would permit an unqualified person to operate that aircraft prior to having received training or completed a transition program. An individual who wishes to provide an aircraft for aircraft specific training and obtain compensation for the use of that aircraft, must, according to the special conditions and limitations, develop a program of training (syllabus outline). If the owner is not an "authorized" instructor, he, the owner will need to provide a suitable instructor (of his or her choosing) to provide the training to program participants. It is highly unlikely that the aircraft owner would permit an unqualified person to operate that aircraft before becoming thoroughly knowledgeable of its performance and operating characteristics, normal,

abnormal and emergency procedures, unusual design characteristics, and specific operational parameters before allowing its use. An "authorized" instructor is, however, qualified to properly impart knowledge and skill to applicants, then, through oral and practical tests, evaluate a person's performance to the level required for the original issuance of the pilot certificate held by the applicant.

Generally, commenters who support the petition cite several reasons granting the proposed exemption would have a positive impact. Most of these commenters agree that the overall safety associated with operation of experimental aircraft would improve. These commenters contend that experimental aircraft have become increasingly complex, varied, and sophisticated, thus individuals who wish to operate these aircraft require increased training. According to these commenters, such training should be conducted in the same, or at least a similar, make and model as the experimental aircraft the individual desires to operate. The commenters contend that providing this in-type training will increase the level of preparedness of experimental aircraft pilots and subsequently reduce the number of accidents by these individuals, many of whom are either inexperienced or under-experienced in experimental aircraft flight operations.

Several commenters note flight training in standard category aircraft is inadequate because of the significant

differences in performance that exist between standard category aircraft and experimental aircraft. Also, several commenters note NTSB Safety Recommendation No. A97-55 cited the inability of a pilot to receive training in his or her specialized aircraft as a leading cause of accidents in these experimental aircraft. Additionally, many commenters emphasize the need for such training to be provided by a qualified and experienced instructor.

Many of the commenters supporting this petition noted the difficulties encountered in obtaining the necessary training to operate their experimental aircraft. According to one commenter, most experimental aircraft pilots are willing and eager to obtain training, when available, and often are willing to travel great distances (at considerable personal expense) to take advantage of such training. However,

commenters note in-type training simply is not available in most cases, mainly because owners of similar aircraft are reluctant to loan their aircraft to inexperienced pilots for such training without compensation for use of their aircraft and the service provided. According to these commenters, a grant of this exemption would increase the availability of experienced pilots who would be more willing to offer instruction in their aircraft. Also, one commenter notes a grant of this exemption would increase the availability of in-type training at various locations throughout the United States.

A few commenters also state it is difficult to obtain insurance that will cover the pilot of an experimental aircraft who does not already have between 10 and 20 hours of in-type flight training.

The FAA's analysis/summary is as follows:

Historically, the FAA's position on the use of experimental aircraft for compensation or hire has been that an aircraft with an experimental certificate may be used for crew training or flight instruction where no charges or remuneration for the use of the aircraft are involved. The FAA has allowed pilots to receive flight instruction in experimental aircraft where they pay for the services of a flight instructor. This is not considered to be carriage of persons or property for compensation or hire because the flight instructor is being paid for the instruction, not for piloting the aircraft. The FAA has also allowed, at the discretion of the examiner, the use of an experimental aircraft during a practical test.

The FAA has not allowed, however, for experimental aircraft to receive compensation for the use of their aircraft by pilots who desire to receive flight training. Because of this, owners of similar or same-design aircraft are reluctant to provide their an aircraft at no cost to others,

for an indeterminate number of operating hours for aircraft specific training. As a result, persons seeking aircraft-specific flight instruction on an experimental aircraft similar to the one they want to operate cannot find similar or same-design aircraft to receive the flight instruction.

For those reasons, this places the aircraft builder/pilot in

the position of attempting to acquire flight instruction in a "similar" aircraft with a standard airworthiness certificate, or conducting a flight test without benefit of prior instruction. The FAA recognizes that these requirements may force amateur builders to become amateur test pilots. This is of particular concern because of the increasing number of amateur- and kit-built aircraft being constructed and flown. Many of the pilots of these aircraft are self-taught, resulting in a high accident rate during early hours of test flight.

In addition, the FAA acknowledges that certain small aircraft may have pitch and control sensitivities quite different from type-certificated aircraft and that such aircraft may not meet the standard design criteria established for aircraft certified in the standard category. Type-specific training may prepare those builders/pilots to safely conduct taxi and first flight tests with reasonable knowledge of the control difficulties they may encounter. The NTSB, in Safety Recommendation No. A97-55, recommended that the FAA either provide an exemption for operators of kit-built aircraft or change the rule to permit such transition training.

Finally, the FAA notes that operating limitations prohibit the pilot from carrying persons on board the aircraft who are not necessary for the conduct of the flight during the flight test phase. Amateur and kit-built aircraft which receive airworthiness certificates in accordance with the provisions of 14 CFR Sections 21.191(g) and (h) are issued operating limitations to allow the aircraft to be flown in sparsely populated areas for the purpose of flight testing. This testing is conducted to determine that the aircraft has no hazardous operating characteristics or design features and is fully controllable throughout its normal range of speeds and maneuvers to be flown. It would not be in the interest of safety to allow third parties, not required for the conduct of such testing, to be carried on board the aircraft when such activities are being carried out. The FAA intends to maintain this provision to preclude risk to those persons not necessary for the conduct of flight test operations.

The FAA agrees with the petitioner and the NTSB that type-specific training in experimental aircraft is needed. The FAA also agrees that owners of experimental aircraft should

be allowed to receive compensation for the use of their

aircraft for aircraft-specific flight instruction as long as certain conditions and limitations are in place. Therefore the FAA has determined that a grant of this petition would be in the public interest and would not adversely affect safety.

This exemption will permit owners of certain amateur and kit-built aircraft certificated in the experimental category to be reimbursed for the use of their aircraft when their aircraft are used to provide aircraft-specific flight training. The flight instruction must be given by qualified instructors and the aircraft used must have completed phase I flight testing, been found in safe condition for flight, and met the requirements of Section 91.319(b).

In consideration of the foregoing, I find that a grant of exemption is in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. Sections 40113 and 44701, delegated to me by the Administrator (14 CFR Section 11.53), members of the Experimental Aircraft Association, the Small Aircraft Manufacturers Association, and the National Association of Flight Instructors who own certain amateur- and kit-built aircraft certificated in the experimental category are granted an exemption from 14 CFR Sections 91.319(a)(1) and (2) to receive compensation for the use of the aircraft for the purpose of conducting aircraft-specific flight training and flight reviews under 14 CFR Section 61.56, subject to the following conditions and limitations:

1. The aircraft must -
 - a. Have been granted an experimental certificate under the provision of Section 21.191(g) or (h);
 - b. Be inspected in accordance with the provisions of Section 91.409(b) for a 100-hour condition inspection, or in accordance with an FAA-approved inspection program that includes provisions for ensuring continued airworthiness and a record of time remaining on life-limited parts in accordance with the manufacturer's instructions;
 - c. Be operated and maintained, including a yearly condition inspection, in accordance with the

FAA-approved operating limitations; and

- d. Have completed phase I flight testing and be operating in phase II in accordance with the operating limitations made a part of the airworthiness certificate issued for the aircraft.
2. All inspections conducted under this exemption must be recorded in an appropriate maintenance record with the following statement:

"I certify that this aircraft has been inspected on (insert date) in accordance with condition No. 1 of Exemption No. and found to be in a condition for safe operation."

The entry must include the aircraft total time in service and the name, signature, certificate number, and type of certificate held by the person performing the inspection. Only an FAA-certificated mechanic with airframe and powerplant ratings or an FAA-certificated repairman (providing the repairman is the original builder of the aircraft) may perform this inspection and make the entry in the maintenance record.

3. Aircraft-specific training under this exemption must be provided by an authorized instructor as described in Section 61.1(b)(2) or the holder of a Letter of Operational Authority, issued by the Administrator, for that particular type of aircraft
4. An aircraft-specific, flight training syllabus must be prepared by the instructor providing the training for use during the training program and must be made available to the Administrator upon request. The instructor conducting the transition training program must keep, for a period of 3 years, a record of the training given.
5. Owners of aircraft operated under this exemption must maintain a record that includes the name of the person receiving training, the date of the training, and the flight time. Such records must be made available to the Administrator, upon request, for 3 years.
6. Persons receiving aircraft-specific flight instruction

must have the endorsements required by Section 61.31(e) through (j), as appropriate, before beginning training under this exemption.

7. A copy of this exemption must be carried on board the aircraft during aircraft-specific flight training conducted under this exemption.

This exemption terminates on April 30, 2002, unless sooner superseded or rescinded.

Issued in Washington, DC, on April 6, 2000.

/s/ L. Nicholas Lacey
Director, Flight Standards Service

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