



U.S. Department
of Transportation
**Federal Aviation
Administration**

Aviation Safety

800 Independence Ave
Washington, DC 20591

In the matter of the petition of

**NATIONAL UNITED STATES
ARMED FORCES MUSEUM**

For an exemption from §§ 91.9,
91.315, 91.319(a), 119.5(g), and
119.21(a) of Title 14, Code of
Federal Regulations

Exemption No. 20180
Regulatory Docket No. FAA-2019-0736

DENIAL OF EXEMPTION

By letters posted to the Docket on September 5, 2019 and October 30, 2019, Mr. Ed Farris, President, National United States Armed Forces Museum (NUSAFM), 8611 Wallisville Road, Houston, TX 77029, petitioned the Federal Aviation Administration (FAA) on behalf of NUSAFM for an exemption from §§ 91.9, 91.315, 91.319(a), 119.5(g), and 119.21(a) of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption, if granted, would allow NUSAFM to operate an aircraft for the purpose of carrying passengers on local educational and historical flights for compensation or hire in the form of a Living History Flight Experience (LHFE).¹

The FAA responded to NUSAFM's first letter on September 12, 2019, stating it could not process the request any further until the applicable requirements of § 11.81 were met. A second letter was issued on January 23, 2020 stating NUSAFM's manuals had not met the requirements of the FAA's "Policy Regarding Living History Flight Experience Exemptions for Passenger Carrying Operations Conducted for Compensation and Hire in Other Than Standard Category Aircraft"², which identified criteria by which all LHFE petitioners would be evaluated. Mr. Farris responded to that letter on February 14, 2020, providing the requested information via thumb drive.

The Petitioner Requests Relief from the Following Regulations:

Section 91.9 prescribes, in part, that no person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual, markings, and placards requirements.

¹ Docket No. FAA-2015-0517

² 80 Fed. Reg. 43012 (July 21, 2015) <https://www.federalregister.gov/documents/2015/07/21/2015-17966/policy-regarding-living-history-flight-experience-exemptions-for-passenger-carrying-operations>

Section 91.315 prescribes that no person may operate a limited category civil aircraft carrying persons or property for compensation or hire.

Section 91.319(a) prescribes that no person may operate an aircraft that has an experimental certificate for other than the purpose for which the certificate was issued; or carrying persons or property for compensation or hire.

Section 119.5(g) prescribes in pertinent part that no person may operate as a direct air carrier or as a commercial operator without, or in violation of, an appropriate certificate and appropriate operations specifications. No person may operate as a direct air carrier or as a commercial operator in violation of any deviation or exemption authority, if issued to that person or that person's representative.

Section 119.21(a) prescribes in pertinent part that each person who conducts airplane operations as a commercial operator engaged in intrastate common carriage of persons or property for compensation or hire in air commerce, or as a direct air carrier, shall comply with the certification and operations specifications requirements of subpart C of this part.

The petitioner supports its request with the following information:

National United States Armed Forces Museum is an educational museum which operates the HH-46E, Serial Number N7678F. The petitioner states the aircraft is in excellent condition with over 50 years of service and is historically significant and rare. The petitioner states this aircraft holds a special airworthiness certificate issued under the experimental exhibition category and was originally designed in 1956 as the V-107 (Vertol) to be used in civilian commuter transport by New York Airways and Pan American Airways. The petitioner further explains that after its introduction as a standard category aircraft for civilian use, all branches of the United States military tested the aircraft and only the U.S. Navy and Marine Corps adopted the CH-46E.

The petitioner details several beliefs as to how it provides an equivalent level of safety to that provided by compliance with the regulations. First, they state NUSAFM is committed to safe operation of the aircraft, and that the aircraft has an impeccable record of safety and is a fully functional museum and educational facility. Additionally, all flight and ground operations are conducted in accordance with the flight manuals for the aircraft as well as the NUSAFM manual system.

The petitioner continues by stating the aircraft is maintained at a level that meets or exceeds the regulations they request relief from. To support this, the petitioner claims its pilots and maintenance personnel are unsurpassed in knowledge of the operation and maintenance of the aircraft. The petitioner continues by stating its pilots, air-crew and maintenance personnel are U.S. Navy and Marine Corps personnel specifically trained on the CH/HH-46E aircraft. Additionally, FAA-approved inspection programs have long been established for the aircraft, and military technical orders are included in the maintenance of the aircraft.

Lastly, the petitioner has developed a safety management system to foster and maintain a proactive safety culture. Petitioner stated that all pilots are required to meet or exceed the experience and training requirements specified in the NUSAFM general operations manual and pilot qualifications training manual.

Federal Register Notice

The FAA published a summary of the petition in the *Federal Register* on February 22, 2021 (86 FR 10615). There were 59 comments received.

There were 38 comments in support of the petitioner's request. These commenters believe NUSAFM advances knowledge and understanding of the U.S. Armed Forces by providing close contact experiences with historical military artifacts and providing an immersive learning environment during the museums tours and special events. Of the 38 supportive comments, 37 commenters stated that the museum arranges, describes and makes its collection accessible in support of scholarships, exhibitions, productions and education. They also believe the museum harnesses the skills, experiences and dedication of American veterans to provide relief services during natural disasters by using museum assets, both vehicles and aircraft. They continue by mentioning how fortunate NUSAFM is to have 200 volunteer members, including 40 pilots and crew, who give their time, money, passion and expertise to NUSAFM. All 37 commenters state these members restore, preserve and operate a wide variety of military artifacts, vehicles and aircraft. Additionally, all 37 commenters believe the requested relief, if granted, would allow NUSAFM to conduct operations that enhance the museum's ability to serve their community.

The additional supportive commenter, a veteran, stated NUSAFM has been a tremendous help to the Houston area as well as the veteran community. This veteran stated NUSAFM gave him the opportunity to learn as much as he could in flight, to the extent that he sought further education to become an Aviation Maintenance Technician. The commenter stated the museum has offered him and many other veterans access to a field they believed to be unavailable. This commenter also stated members spend an enormous amount of time maintaining and restoring artifacts within the guidelines brought forth by manufacturer's specifications and publication for NUSAFM to provide a realistic experience from the museum curators to the ordinary person that may come through.

There were 7 comments stating NUSAFM's abilities are somewhat limited as helicopters are expensive to maintain. These commenters are in support of granting the exemption because their ability to carry passengers for a fee would allow the museum to defray upkeep costs on the aircraft.

The remaining 19 comments describe how NUSAFM is unlike any other as it's a living history museum with operational exhibits. They state NUSAFM is an education piece in the sense it offers living artifacts that uphold the ideals of education. It is their belief the memorabilia has the ability to pass on the history of those who served and operated historical aircraft.

The FAA's Response

The FAA agrees with all responses submitted by commenters who stated the opportunities offered to veterans and the public is a large benefit to the community. The FAA agrees in the benefit provided to the public through access to tours, special events and public education. The FAA has a long history of supporting outreach programs who provide history of the U.S. Armed Forces and recognition of our veteran's efforts. Several commenters submitted an impressive fact that the museum has over 200 volunteer members including 40 pilots and crewmembers shows the dedication of the veterans and members supporting the museum. The FAA appreciates the commenter's efforts taken by members and veterans to restore, preserve and operate the wide variety of military artifacts, vehicles and aircraft for NUSAFM.

The FAA's Analysis

The FAA reviewed the petition and supplemental information and determined that, despite numerous attempts to obtain the requested information, the petitioner did not submit sufficient information to conclude that the proposed operations could be operated safely in the National Airspace System. Specifically, the petitioner has not provided a manual system similar in size and scope to those in 14 CFR Part 135. Additionally, the manual system does not contain procedures addressing the items listed in the FAA's 2015 LHFE Policy or items listed in 14 CFR Part 135 to the extent they apply to their operation. Several documents submitted were original training manuals for the military containing processes and procedures that are not standard operating practice for LHFE operations. The manuals did not include a plan to mitigate risk as they become known or to correct an unsafe condition or practice. The petitioner has not provided a detailed explanation of all supporting and historical safety-related data such as maintenance history, operational failures and civilian and military accident rates. It is for those reasons the FAA was unable to determine if the operation would provide an equivalent level of safety required by 14 CFR § 11.81.

As a result, the FAA cannot determine that operation of the proposed aircraft operations would not cause an adverse effect on safety.

The FAA's Decision

In consideration of the foregoing, I find that a grant of exemption would not be in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. 106(f), 40113, and 44701, delegated to me by the Administrator, the petition of the National United States Armed Forces Museum for an exemption from 14 CFR §§ 91.9, 91.315, 119.5(g), 91.319(a) and 119.21(a) is hereby denied.

Issued in Washington, D.C., on May 31, 2023 .

Sincerely,

/s/

Caitlin E. Locke

Acting Deputy Executive Director, Flight Standards Service