



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

Aviation Safety

800 Independence Ave
Washington, DC 20591

July 22, 2021

Exemption No. 18860
Regulatory Docket No. FAA-2021-0623

Mr. Sean Elliott
Vice President, Advocacy & Safety
Experimental Aircraft Association
P.O. Box 3086
Oshkosh, WI 54903

Dear Mr. Elliott:

This letter is to inform you that the Federal Aviation Administration (FAA) has granted your request for exemption. This letter transmits the FAA's decision, explains its basis, and provides the conditions and limitations of the exemption, including the date it ends.

The Basis for the FAA's Decision

By letter dated June 24, 2021, you petitioned the Federal Aviation Administration on behalf of the Experimental Aircraft Association (EAA) for an exemption from § 91.315 of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption, if granted, would allow EAA to operate its limited category aircraft for the purpose of accomplishing flight training, checking,¹ testing,² and recent flight experience³ for compensation.

¹ FAA regulations distinguish checking from flight training. FAA considers the petitioner's letter as requesting relief to operate its aircraft to perform checks required under part 61 (e.g. an instrument proficiency check under § 61.57(d) or a pilot proficiency check under § 61.58) and provide compensation to the individual administering the check in order for petitioner's pilots to remain qualified in the aircraft.

² The FAA construes the petitioner's letter as requesting relief to conduct practical tests for compensation in limited category aircraft. Because this activity must be administered by a designated pilot examiner, the FAA finds that relief is provided in § 61.47.

³ Recent flight experience generally does not require a flight instructor and can be accomplished simply by a pilot completing certain flight activity (e.g. performing takeoffs and landing under § 61.57(a)). To the extent that petitioner seeks to allow a flight instructor to be present in its aircraft while a pilot is performing recent flight experience and receive compensation, the FAA construes that activity as flight training provided the flight instructor is qualified in the aircraft. As such, to the extent that FAA is granting relief for flight training in this exemption, it extends to recent flight experience activity when an instructor is onboard the aircraft and receives compensation.

AFS-22-00068-E

EAA requests an exemption from Section 91.315 to the extent necessary to permit the owner (EAA Foundation) to operate its limited category aircraft (TB-25H N10V, hereinafter “B-25,” and North American F-51D Mustang N3451D, hereinafter “F-51D”) to accomplish flight training, checking, testing, and recent flight experience for compensation when the aircraft is not being rented to the public and compensation is provided only to the individual providing the flight training and checking at the reasonable value for those services.

EAA contends that pilots who fly limited category aircraft need to be able to receive all types of flight training including but not limited to initial and recurrent training in their aircraft and that this flight training is essential to aviation safety. Accordingly, EAA is petitioning for an exemption to permit training that will ensure safety by permitting flight training, checking, and testing in limited category aircraft when no compensation is provided for the cost of owning, operating, or maintaining the aircraft.

EAA maintains that a grant of exemption would be in the public interest because FAA has “long and consistently considered flight training at all levels to be in the public interest.” Petitioner notes that flight training is the cornerstone of safe flight operations, and the FAA promotes flight training as evidenced by the requirements for a biennial flight review, the FAA-sponsored pilot proficiency award program, and many FAA-sponsored safety seminars. Petitioner states that a grant of exemption would allow for flight training, checking, and testing not currently available under the regulations.

EAA states that limited category aircraft are historic aircraft. Only former U.S. military aircraft produced for use during World War II were eligible for limited category certification. Petitioner notes that the limited category was created by the Civil Aviation Administration (prior to the creation of the FAA) after World War II to allow civil operation of aircraft that had proven records as military aircraft. Petitioner states that, although the FAA established a letter of deviation authority (LODA) process in regulation for flight training in experimental aircraft, no such allowance was placed in the regulation for limited category aircraft.

EAA contends that it will maintain a level of safety equal to or greater than that required by the regulation by using its B-25 and F-51D aircraft with dual control configuration developed specifically to provide flight training and that all flight instructors will hold an FAA-issued flight instructor certificate. Petitioner recommends the following conditions and limitations for flight training, checking, testing, and recent flight experience training for compensation in its B-25 and F-51D aircraft: (1) the relief would apply only to EAA Foundation B-25 and F-51D aircraft, (2) flight training would be conducted by an FAA certificated flight instructor, (3) the relief would not be applicable if the aircraft is being rented to the public, (4) pilots receiving flight training must have a copy of the exemption when exercising the relief and provide a copy upon request by any representative of the FAA Administrator, and (5) failure to comply with the conditions and limitations would be grounds for immediate suspension or revocation of the exemption.

By comment posted to the docket on July 19, 2021, EAA supplemented its petition for exemption requesting that the relief apply to all EAA members who post a Notice of Joinder⁴ to the docket.⁵

The FAA’s analysis is as follows:

The FAA finds that there is good cause not to publish a summary of the petition in the Federal Register because delaying action on the petition would have an adverse and potentially immediate impact on the petitioner’s ability to operate its limited category aircraft for the purpose of safety essential flight training, testing, and checking when no compensation is provided for the use of the aircraft.

The FAA recently noted a discrepancy between the plain language of Section 91.315 and FAA guidance to its inspectors⁶ on the approach to flight training in aircraft holding special airworthiness certificates when no compensation is provided for the use of the aircraft.⁷ This discrepancy has resulted in an inability for owners to receive and provide compensation for specialized flight training and checking for the owners themselves or pilots designated by the owner who regularly operate these aircraft when compensation is provided solely for the flight training or checking. The FAA has long emphasized the value of pilots receiving training and checking in the aircraft they will operate. Specifically, it is critical that pilots understand and are familiar with the particular aircraft systems and components; operating characteristics; normal, abnormal, and emergency procedures; and the limitations of the aircraft they will operate. Nevertheless, the need for this type of specialized training must be balanced against the fact that the airworthiness certification requirements for aircraft that hold special airworthiness certificates pose unique operational risk to the national airspace system (NAS). For this reason, the FAA has limited the types of operations that can be accomplished in these aircraft and has specifically prohibited operators from broadly offering the use of their limited category aircraft for flight training.

The petitioner has requested relief from Section 91.315 to allow it to operate its B-25 and F-51D limited category aircraft for compensated flight training when the aircraft itself is not rented for use. The FAA supports the petitioner’s request for relief to allow pilots who expect to regularly operate its B-25 and F-51D aircraft to receive flight training, checking, and testing when compensation is provided to the flight instructor or examine providing those services, but no compensation is provided for the use of the aircraft. As noted, the FAA considers this flight training paramount to safe operations in the NAS because it prepares pilots who regularly fly these rare aircraft for their unique operational capabilities. The FAA finds that flight training received in the limited category aircraft the pilot will fly is more useful than flight training received in aircraft of the same category and class but that bear little similarity operationally to

⁴ A Notice of Joinder is a legal mechanism for requesting relief on the same grounds as another party. For clarity, the FAA simply refers to this document as a “letter of intent” in the Conditions and Limitations.

⁵ EAA suggested this approach would work in a similar function to Exemption No. 7897K (granted to the National Business Aviation Association, Regulatory Docket No. FAA-2002-12728).

⁶ FAA Order 8900.1, Vol. 3, Chpt. 11, sec. 1, para. 3-292.

⁷ See Notification of Policy for Flight Training in Certain Aircraft, 86 FR 36493 (July 12, 2021).

the limited category counterpart. The FAA maintains its view, however, that broadly offering compensated flight training to pilots who will not have ongoing access to these aircraft is not appropriate. These pilots must obtain flight training in the standard category aircraft which they are more likely to operate. Accordingly, the FAA has determined that a grant of relief would not adversely affect safety provided the petitioner operates consistent with the conditions and limitations of this grant of exemption discussed below.

The FAA also finds that granting relief is in the public interest. The discrepancy between FAA guidance to its inspectors and the regulations has created confusion in industry. The public expects and the agency strives for clarity in the application of its regulations. This certainty is the foundation of good government and essential in ensuring a culture of compliance. Given industry's reliance on the prior policy permitting this type of operation in contravention of the express regulatory language and the FAA's conclusion that the flight training can advance safety under the conditions specified, the FAA seeks to mitigate further disruption and remove obstacles to those operations that will improve safety in the NAS.

For these reasons, the FAA is extending the relief granted to the petitioner to owners of limited category aircraft, including petitioner's members, who seek to operate their aircraft for the purpose of receiving and providing compensation for flight training when no compensation is provided for the use of the aircraft. This relief extends to pilots associated with the owner who regularly fly the owner's limited category aircraft and require specialized flight training and checking to maintain proficiency. It does not, however, allow owners to advertise or broadly offer their aircraft for use. Any owner of a limited category aircraft seeking the regulatory relief provided under this exemption must submit to the FAA a request to use this exemption and affirm his or her intention to comply with the conditions and limitations of this exemption.

In accordance with Condition and Limitation No. 1, owners of limited category aircraft who want to exercise the relief provided in this exemption must submit a Letter of Intent to Regulatory Docket No. FAA-2021-0623 (<http://www.regulations.gov>). The Letter of Intent must state the owner's intention to exercise the relief provided in Exemption No. 18860 and affirm that they will operate consistent with the conditions and limitations prior to conducting any operation under Exemption No. 18860. The following information should be provided: aircraft registration number(s), aircraft serial number(s), aircraft make(s)/model(s), owner (person) requesting this relief, and owner (or responsible person) contact information (address and phone number). Owners of limited category aircraft should retain documentation to verify proper and timely submission of the Letter of Intent.

Aircraft holding limited category airworthiness certificates generally have an operating limitation that prohibits that aircraft from being operated for compensation or hire carrying persons or property. Condition and Limitation No. 2 provides relief to the extent necessary to allow operations consistent with this grant of exemption. The relief from Section 91.9(a) applies only to this specific operating limitation and only to the extent necessary to conduct operations pursuant to Exemption No. 18860. All other operating limitations remain in effect and apply to all operations of the aircraft listed in this exemption.

Conditions and Limitations Nos. 3, 4, and 5 explain the scope and extent of compensatory events available with this exemption. Condition and Limitation No. 3 states that the owner (or owner's delegate) may provide compensation for flight training, checking, and testing in the owner's limited category aircraft to an authorized flight instructor provided no compensation is provided for the use of the aircraft. It notes that compensation for the use of the aircraft includes expenses, including a pro rata share of expenses, such as (but not limited to) fuel, oil, airport expenditures, or rental fees. Condition and Limitation No. 4 limits compensation for flight training to the fair market value for instructional services. This condition is intended to foreclose an individual from embedding the cost of the aircraft in the compensation provided for flight training. Condition and Limitation No. 5 states that owners of limited category aircraft may not advertise or broadly offer the use of their aircraft for flight training under this exemption. The FAA intends relief granted by this exemption to permit flight training to those individuals who have ongoing access to the limited category aircraft and need to be proficient because it is an aircraft they regularly fly. This relief is not intended to allow rides in these unique aircraft under the guise of flight training. The FAA recommends that those owners who wish to offer such flights should apply for a Living History Flight Experience exemption.

In the interest of ensuring consistent identification and application of this exemption the FAA has included Condition and Limitation No. 6, which requires a copy of the exemption and a copy of the Letter of Intent to be carried when exercising the relief provided under this exemption. It must be available for inspection by FAA personnel upon request.

Finally, Condition and Limitation No. 8 prohibits the exercise of this relief outside the United States.

The FAA notes that the relief provided allows owners of limited category aircraft (or their delegates) to receive and provide compensation for flight training in the owner's limited category aircraft only when no compensation is provided for the use of the aircraft itself. Because a flight instructor providing flight training and checking for compensation in the owner's limited category aircraft would also be considered to be operating the aircraft under the broad definition of "operate" in Section 1.1, the FAA extends the relief granted to the owner in this exemption to flight instructors who are qualified to provide flight training in the aircraft provided the flight instructor receives compensation at the fair market cost of the flight training. Finally, the FAA reiterates that the relief provided in this exemption does not permit the owner of a limited category aircraft to advertise or broadly offer the use of his or her aircraft for flight training. The FAA finds that relief is appropriate only for those individuals associated with the owner who regularly operate these aircraft in the NAS and not to individuals who do not have ongoing access to the aircraft.

The FAA's Decision

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. §§ 106(f), 40113, and 44701, delegated to me by the Administrator, owners of limited category aircraft who receive and provide compensation for flight training in their aircraft are granted an exemption from 14 CFR §§ 91.315 and 91.9 provided the availability of the aircraft for flight training is not advertised or

broadly offered and no compensation is provided for the use of the aircraft. This exemption is subject to the conditions and limitations listed below.

Conditions and Limitations

1. This exemption applies only to owners of limited category aircraft who have submitted a Letter of Intent to Regulatory Docket No. FAA-2021-0623 (<http://www.regulations.gov>). The Letter of Intent must state the requester's intention to exercise the relief granted in this exemption and affirm the intention to act consistently with the conditions and limitations herein. Owners of limited category aircraft who want to exercise the relief provided in this exemption should provide the following information:
 - a. Aircraft Registration Number(s),
 - b. Aircraft Serial Number(s),
 - c. Aircraft Make(s)/Model(s),
 - d. Owner (or responsible person if the owner is a company or association) requesting this relief, and
 - e. Contact information (address, email, and telephone) for the owner or responsible person.
2. In accordance with Section 91.9, the aircraft must be operated in accordance with the operating limitations made a part of the limited category airworthiness certificate, except for the specific relief granted by this exemption.
3. The owner (or owner's delegate) may provide compensation for flight training, checking, and testing in this aircraft to an authorized instructor, provided no compensation is provided for the use of the aircraft. Compensation for the use of the aircraft includes expenses, including a pro rata share of expenses, such as (but not limited to) fuel, oil, airport expenditures, or rental fees.
4. With this exemption, compensation for flight instruction is limited to the fair market value for that instruction.
5. Owners of limited category aircraft exercising the privileges of this exemption are restricted from advertising or broadly offering the use of their aircraft for flight training.
6. This document, or an electronic copy, and a copy of the owner's letter of intent must be carried and available for inspection by FAA personnel for all operations conducted under this authority.

7. If the signatory on the Letter of Intent relinquishes responsibility, the relief is canceled for that owner.
8. This exemption is not valid for operations outside of the United States.

Failure to comply with any of the above conditions and limitations may result in the immediate suspension or rescission of this exemption.

The Effect of the FAA's Decision

This exemption terminates on July 31, 2025, unless sooner superseded or rescinded.

To request an extension or amendment to this exemption, please submit your request by using the Regulatory Docket No. FAA-2021-0623 (<http://www.regulations.gov>). In addition, you should submit your request no later than 120 days prior to the exemption's expiration date listed above, or 120 days before you need the amendment.

Any extension or amendment request must meet the requirements of 14 CFR § 11.81.

Sincerely,

/s/

Robert C. Carty
Deputy Executive Director, Flight Standards Service