

### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866, and

(2) Will not affect intrastate aviation in Alaska.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

#### 2021–14–12 True Flight Holdings LLC:

Amendment 39–21639; Docket No. FAA–2021–0541; Project Identifier AD–2021–00453–A.

#### (a) Effective Date

This airworthiness directive (AD) is effective July 27, 2021.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to True Flight Holdings LLC Models AA–1, AA–1A, AA–1B, AA–1C, and AA–5 airplanes, all serial numbers, certificated in any category.

#### (d) Subject

Joint Aircraft System Component (JASC) Code: 5512, Horizontal Stabilizer, Plate/Skin; 5522, Elevator, Plates/Skin Structure.

#### (e) Unsafe Condition

This AD was prompted by corrosion and delamination of the horizontal stabilizer bondlines. The FAA is issuing this AD to detect and address cracks, buckles, corrosion, delamination, rust, and previous repair of the horizontal stabilizers. The unsafe condition, if not addressed, could result in reduced structural integrity with consequent loss of control of the airplane.

#### (f) Compliance

Comply with this AD within the compliance times specified, unless already done.

#### (g) Inspection of Bondlines of the Horizontal Stabilizers

Within the next 25 hours time-in-service or at the next scheduled 100 hour or annual inspection after the effective date of this AD, whichever occurs first, inspect the horizontal stabilizers, paying particular attention to the bondlines, for cracks, buckles, corrosion, delamination, rust, and previous repair in accordance with paragraphs 1. and 3. of Part B of True Flight Aerospace Service Bulletin SB–195, Revision A, dated June 1, 2021 (True Flight SB–195, Revision A). If there is any crack, buckle, corrosion, delamination, rust, or previous repair, before further flight, repair or replace the affected part in accordance with paragraphs 1.c. and 2. through 4. of True Flight SB–195, Revision A, as applicable.

#### (h) No Reporting Requirement

True Flight SB–195, Revision A specifies notifying True Flight Holdings LLC of compliance with the service bulletin; however, this AD does not contain that requirement.

#### (i) Special Flight Permit

A special flight permit is prohibited.

#### (j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

#### (k) Related Information

For more information about this AD, contact Fred Caplan, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5507; fax: (404) 474–5606; email: [frederick.n.caplan@faa.gov](mailto:frederick.n.caplan@faa.gov).

#### (l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) True Flight Aerospace Service Bulletin SB–195, Revision A, dated June 1, 2021.

(ii) [Reserved]

(3) For True Flight Aerospace service information identified in this AD, contact True Flight Holdings LLC, 2300 Madison Highway, Valdosta, GA 31601; phone: (229) 242–6337; email: [info@trueflightaerospace.com](mailto:info@trueflightaerospace.com).

(4) You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov), or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued on June 25, 2021.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021–14687 Filed 7–9–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Parts 61 and 141

[Docket No.: FAA–2021–0592]

#### Notification of Policy for Flight Training in Certain Aircraft

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notification of policy.

**SUMMARY:** This notification provides clarification on flight training for compensation in certain aircraft that hold special airworthiness certificates including limited category,

experimental category, and primary category aircraft. It also provides guidance on how flight training for compensation can be accomplished in these aircraft in compliance with regulations and establishes a process for owners of experimental aircraft to obtain a letter of deviation authority to receive and provide compensation for flight training in their experimental aircraft.

**DATES:** The policy described herein is effective July 12, 2021.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this policy notification, contact Erin Cappel for information about Letters of Deviation Authority and Thomas (TJ) Leahy for information about exemption, General Aviation and Commercial Division, General Aviation Operations Branch, (202) 267-1100, or email [9-AFS-800-Correspondence@faa.gov](mailto:9-AFS-800-Correspondence@faa.gov), 800 Independence Ave. SW, Washington, DC 20591.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On April 2, 2021, the United States Court of Appeals for the District of Columbia Circuit dismissed a petition for review of the FAA's emergency cease and desist order against Warbird Adventures, Inc. and Thom Richard (hereinafter "Warbirds"), ordering that they cease and desist from operating their limited category aircraft in violation of § 91.315 of title 14 of the Code of Federal Regulations (14 CFR). In this case, Warbirds maintained a publicly available website that advertised opportunities to fly in Warbirds' limited category aircraft at upcoming airshows and allowed members of the public to book flights in exchange for substantial amounts of money. Section 91.315 states that no person may operate a limited category aircraft carrying persons or property for compensation or hire.

Before the Court, Warbirds argued that it was conducting flight training for compensation in its limited category aircraft, which it claimed is not prohibited under § 91.315.<sup>1</sup> The FAA responded that, under the plain language of § 91.315, flight training for compensation constitutes operating a limited category aircraft carrying a person for compensation or hire and, therefore, is a violation of the regulation. After the Court dismissed the petition for review, several industry groups requested that the FAA publish

<sup>1</sup> The FAA has not conceded that the flights being operated by Warbirds were for the purpose of flight training.

a statement explaining the impact of the decision and providing clarification regarding flight training in general and flight training for compensation in certain aircraft that hold special airworthiness certificates.<sup>2</sup> The FAA is issuing this notification in response to the request from industry.

**II. FAA Regulations and Guidance**

*A. Pilot Requirements and Operating Requirements*

The requirements for a person exercising the privileges of a pilot certificate or a flight instructor certificate are generally contained in 14 CFR part 61. These regulations govern what is required to "act as pilot in command," "serve as a required flightcrew member," or "conduct flight training in an aircraft." The regulations in 14 CFR part 91 by contrast contain operating requirements that govern how the aircraft itself may be operated. The term "operate" is broadly defined in 14 CFR 1.1 as "use, cause to use or authorize to use aircraft, for the purpose (except as provided in § 91.13 of this chapter) of air navigation including the piloting of aircraft, with or without the right of legal control (as owner, lessee, or otherwise)." As such, the determination of whether someone is operating an aircraft is not contingent on ownership, flightcrew status, or the receipt of payment for the use of the aircraft.

Although a person may hold the appropriate privileges "to act as pilot in command" or "conduct flight training" under part 61, the regulations in part 91 may restrict the exercise of those privileges in a particular category of aircraft under certain conditions, such as operations conducted for compensation or hire. As defined, the term "operate" has broader meaning than the general terms used in part 61 that address "acting as pilot in command" or "exercising the privileges" of a particular pilot certificate. A person may be considered to "operate" an aircraft under the § 1.1 definition without serving as a required flightcrew member or manipulating the controls of the aircraft.

As noted, under § 91.315, no person may operate a limited category aircraft carrying persons or property for compensation or hire. Based on the plain language of the regulation, the FAA's position as represented in a 2014

<sup>2</sup> On April 19, 2021, AOPA, EAA, and GAMA sent a joint letter to Ali Bahrami, then Associate Administrator for Aviation Safety. A copy of this letter and the response has been placed in the docket for this notification.

legal interpretation<sup>3</sup> and restated in the *Warbirds* case is that a flight instructor who is operating (*i.e.* "using") a limited category aircraft that is carrying a person (*e.g.* the person receiving instruction) for compensation (*e.g.* monetary payment) is acting contrary to the regulation.<sup>4</sup>

The regulations governing other categories of aircraft (experimental aircraft in § 91.319 and primary category aircraft in § 91.325) include the same language as the prohibition in § 91.315. The prohibitions in §§ 91.319 and 91.325 that mirror the language in § 91.315 must be read to have the same meaning.<sup>5</sup> As such, a flight instructor providing flight training in one of these categories of aircraft for compensation is acting contrary to the regulations absent a letter of deviation authority (LODA), if applicable, or exemption.

*B. FAA Guidance on Flight Training for Compensation in Experimental Aircraft*

FAA Order 8900.1 contains guidance for FAA inspectors that indicates that flight training in an experimental aircraft for compensation is permissible without a LODA under certain circumstances.<sup>6</sup> The guidance states that flight instructors may receive compensation for providing flight training in an experimental aircraft but may not receive compensation for the use of the aircraft in which they provide that flight training unless they obtain a LODA issued under § 91.319(h). Likewise, the guidance states that owners of experimental aircraft may receive and provide compensation for flight training in their aircraft without a LODA, but owners may not receive compensation for the use of their aircraft for flight training except in

<sup>3</sup> FAA Legal Interpretation to Gregory Morris (October 7, 2014). The Morris Interpretation concluded, *inter alia*, that § 91.315 "does not set forth any exceptions for providing flight training for hire in a limited category aircraft" and that "the only way to provide such training is pursuant to an exemption from this section of the regulations" following the procedures of 14 CFR part 11.

<sup>4</sup> Given the broad definition of "operate" in § 1.1, both the owner of a limited category aircraft seeking flight training and the flight instructor providing the training are considered to be operating the aircraft. The FAA notes that the term "operate" has a different meaning from the term "operational control," which is defined in § 1.1 as "the exercise of authority over initiating, conducting or terminating a flight."

<sup>5</sup> Consistent with the position for limited category aircraft, FAA Order 8900.1 addresses the prohibition against the operation of an experimental aircraft to carry persons or property for compensation or hire. It acknowledges that the restriction "prohibits the widespread use of experimental aircraft for flight training for compensation or hire." FAA Order 8900.1, Vol. 3, Chpt. 11, sec. 1, para. 3–293.

<sup>6</sup> FAA Order 8900.1, Vol. 3, Chpt. 11, sec. 1, para. 3–292.

accordance with a LODA issued under § 91.319(h).<sup>7</sup>

The distinction set forth in FAA Order 8900.1 is inconsistent with the definition of “operate” in § 1.1 and the plain language of § 91.319. Where a regulation and guidance conflict, the regulation controls.<sup>8</sup> Accordingly, owners of experimental aircraft and flight instructors who have operated experimental aircraft for the purpose of compensated flight training without obtaining a LODA (as allowed by FAA guidance) will be required to obtain a LODA to remain compliant with the regulations.

### III. Process for Compliance

The FAA acknowledges that the disconnect between the regulations and the guidance to inspectors has created confusion in industry. The FAA also recognizes the value of specialized flight training in aircraft that hold special airworthiness certificates under certain conditions. This section provides guidance to owners of affected aircraft and flight instructors seeking to conduct flight training for compensation in these aircraft.

#### A. Experimental Category Aircraft

In general, the FAA places limitations on the use of aircraft that hold experimental airworthiness certificates because the airworthiness certification requirements for these aircraft impose no standard and pose unique operational risk to the national airspace system. FAA regulations and guidance direct that, for most training, pilots should use a standard category aircraft to accomplish training rather than aircraft that hold special airworthiness certificates.

Section 91.319(h), however, permits a person to apply for deviation authority to conduct flight training in an experimental aircraft. Currently, individuals seeking to provide flight training and receive compensation for both the flight training and the use of the experimental aircraft must submit an application package to the Flight Standards District Office (FSDO) in the district in which the training will take place. Under § 91.319(h)(2), a request for deviation authority must contain a complete description of the proposed operation and justification that establishes a level of safety equivalent to that provided under the regulations for

the deviation requested. The FAA generally limits LODAs to training that can only be accomplished in aircraft with experimental certificates and directs its inspectors that, with a few exceptions, LODAs should not be issued to permit flight training in experimental aircraft leading toward the issuance of a pilot certificate, rating, or operating privilege.

As discussed, FAA guidance incorrectly indicates that no LODA is necessary if the owner of an experimental aircraft provides compensation for flight training in the owner's own aircraft and no compensation is provided for the use of the aircraft itself. The FAA will update the guidance to align with the regulation, as previously discussed. To mitigate disruption for this type of flight training, which has been allowed under FAA guidance and is viewed as an increased safety measure for pilots who regularly fly these aircraft, the FAA has developed an interim process to issue LODAs to the owners of experimental aircraft and flight instructors that will permit flight training for compensation in experimental aircraft when no compensation is provided for the use of the aircraft.

The FAA finds that, for owners of experimental aircraft seeking flight training in the aircraft they will regularly fly in the national airspace, the standard under § 91.319(h)(2) for granting a LODA has been met. The FAA has long emphasized the importance of pilots being trained and checked in the aircraft they will operate. Specifically, it is critical that pilots understand and are familiar with the particular systems, procedures, operating characteristics, and limitations of the aircraft they will operate. This flight training is distinct from a situation where an aircraft with a special airworthiness certificate is “held out” broadly for training to individuals who pay for both the flight training and the use of an aircraft that they will not have further access to upon completion of LODA training. It is also distinct from flight training that can be accomplished effectively and safely in a standard category aircraft.

The FAA will accept requests for a LODA electronically from an owner of an experimental aircraft or flight instructor who chooses to conduct training in experimental aircraft. LODAs, once issued, will define the scope of the flight training activity so that owners of experimental aircraft may receive and provide compensation for flight training in their aircraft, as well as permit flight instructors to receive compensation for flight training in an

experimental aircraft. These LODAs will prohibit owners and flight instructors from receiving compensation for any other use of the aircraft in which the flight training is provided.

To obtain a LODA, owners of experimental aircraft and flight instructors providing flight training in experimental aircraft may submit a request to the following email address: [9-AVS-AFG-LODA@faa.gov](mailto:9-AVS-AFG-LODA@faa.gov). Applicants seeking a LODA through this process must provide the following information:

- Name
- Address
- Email address
- Pilot Certificate Number
- Flight instructor certificate number (if applying as a Certificated Flight Instructor (CFI))
- Aircraft Registration Number (if applying as an owner)
- Aircraft make/model in which you will receive or provide instruction
- Aircraft home base airport (if applying as an owner)

The FAA will review the information submitted and issue a LODA (via email) that reflects the conditions and limitations contained in this notification, as well any additional limitations required in accordance with § 91.319(h) and (i).

Individuals seeking to provide flight training and receive compensation for both the flight training and the use of the aircraft must continue to apply for LODAs through their local FSDOs.

#### B. Limited Category and Primary Category Aircraft

Section 91.315 does not permit an individual to obtain deviation authority to conduct flight training for compensation or hire in a limited category aircraft. Therefore, as explained in the 2014 legal interpretation, the only way to provide flight training for compensation in a limited category aircraft is pursuant to an exemption from the regulation. Because there is no deviation authority in § 91.325 for primary category aircraft, the owners of these aircraft and flight instructors seeking to conduct flight training for compensation must likewise obtain an exemption from the regulation.

As with the process for issuing LODAs to owners and flight instructors, the FAA will consider adopting a fast-track exemption process for owners of limited category and primary category aircraft seeking to conduct flight training for compensation in these aircraft. As with experimental category aircraft, the FAA will consider granting relief for flight training operations when

<sup>7</sup> Although there is no written guidance for limited category and primary category aircraft, the FAA has applied the same approach to flight training for compensation in limited category and primary category aircraft.

<sup>8</sup> The FAA will revise the guidance in the 8900.1 to reflect the requirements in the regulation.

compensation is provided solely for the flight training and not the use of the aircraft.

The FAA notes that any operator of a limited category aircraft that holds an exemption to conduct Living History of Flight (LHFE) operations already holds the necessary exemption relief to conduct flight training for its flightcrew members. LHFE exemptions grant relief *to the extent necessary* to allow the exemption holder to operate certain aircraft for the purpose of carrying persons for compensation or hire for living history flight experiences. As a condition of these exemptions, the operators must provide regular flight training and checking to flightcrew members. As such, these flight training operations are considered necessary for the operator to conduct the LHFE flights themselves.<sup>9</sup> The FAA will clarify this relief when operators apply for renewal of their LHFE exemptions.

For the safety reasons set forth in this notification, the FAA is considering a rulemaking that would enable the flight training activity discussed in this notification without the need to obtain an exemption or LODA from the FAA.

Issued in Washington, DC.

**Ricardo Domingo,**

*Executive Director, Flight Standards Service, AFX-1.*

[FR Doc. 2021-14765 Filed 7-8-21; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Part 744

[Docket No. 210702-0143]

RIN 0694-A157

#### **Addition of Certain Entities to the Entity List; Revision of Existing Entry on the Entity List; Removal of Entity From the Unverified List; and Addition of Entity to the Military End-User (MEU) List**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Export Administration Regulations (EAR) by adding thirty-four entities

<sup>9</sup> The FAA cautions, however, that LHFE exemptions do not permit operators to allow passengers on LHFE flights to manipulate the controls of the aircraft under the guise of flight training. The flight training relief extends only to the LHFE operator's own flightcrew members for the purpose of training those individuals to conduct LHFE flights.

under forty-three entries to the Entity List. These thirty-four entities have been determined by the U.S. Government to be acting contrary to the foreign policy interests of the United States and will be listed on the Entity List under the destinations of Canada; People's Republic of China (China); Iran; Lebanon; Netherlands (The Netherlands); Pakistan; Russia; Singapore; South Korea; Taiwan; Turkey; the United Arab Emirates (UAE); and the United Kingdom. This final rule also revises one entry on the Entity List under the destination of China. This final rule also removes one entry from the Entity List under the destination of Germany. This final rule removes one entity from the Unverified List, as a conforming change to this same entity being added to the Entity List. In addition, this final rule amends the EAR by adding one entity to the Military End-User (MEU) List under the destination of Russia.

**DATES:** This rule is effective July 12, 2021.

**FOR FURTHER INFORMATION CONTACT:** Chair, End-User Review Committee, Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482-5991, Email: [ERC@bis.doc.gov](mailto:ERC@bis.doc.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Entity List (supplement no. 4 to part 744 of the EAR) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States. The EAR (15 CFR parts 730-774) impose additional license requirements on, and limit the availability of most license exceptions for, exports, reexports, and transfers (in-country) to listed entities. The license review policy for each listed entity is identified in the "License Review Policy" column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** document adding entities to the Entity List. BIS places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The 'Military End-User' (MEU) List (supplement no. 7 to part 744 of the EAR) identifies entities that have been determined by the End-User Review

Committee (ERC) to be 'military end users' pursuant to § 744.21 of the EAR. That section imposes additional license requirements on, and limits the availability of, most license exceptions for, exports, reexports, and transfers (in-country) to listed entities on the MEU List, as specified in supplement no. 7 to part 744 and § 744.21 of the EAR. Entities may be listed on the MEU List under the destinations of Burma, China, Russia, or Venezuela. The license review policy for each listed entity is identified in the introductory text of supplement no. 7 to part 744 and in § 744.21(b) and (e). The MEU List includes introductory text, which specifies the scope of the license requirements, limitations on the use of EAR license exceptions, and the license review policy that applies to the entities. These requirements are also reflected in § 744.21, but for ease of reference, these are also included in the introductory text of the supplement.

The Unverified List, found in supplement no. 6 to part 744 of the EAR, contains the names and addresses of foreign persons who are or have been parties to a transaction, as such parties are described in § 748.5 of the EAR, involving the export, reexport, or transfer (in-country) of items subject to the EAR, and whose bona fides BIS has been unable to verify through an end-use check. BIS may add persons to the Unverified List when BIS or federal officials acting on BIS's behalf have been unable to verify a foreign person's bona fides because an end-use check, such as a pre-license check or a post-shipment verification, cannot be completed satisfactorily for reasons outside the U.S. Government's control.

The ERC, composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List and MEU List. The ERC makes all decisions to add an entry to the Entity List and MEU List by majority vote and makes all decisions to remove or modify an entry by unanimous vote. In addition, when an entity listed on the Unverified List is being added to the Entity List based on a majority vote of the ERC, the ERC's determination to add that entity to the Entity List constitutes interagency approval for a conforming change to remove the same entity from the Unverified List in supplement no. 6 to part 744 of the EAR.